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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 445 / 180

A. C. FINNEY, AS RECEIVER, AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. HALE, AS RECEIVER &c., ET AL., PLAINTIFFS IN ERROR,

vs.

MARY E. GUY AND MARY A. GUY AS EXECUTRIX AND SOLE RESIDUARY LEGATEE OF CHARLES T. GUY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF [illegible]

(18,296.)

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IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Wisconsin, Greeting:

Because that in this record and proceedings and also in the rendition of the judgment of a plea which is in the supreme court of the State of Wisconsin, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in the said suit between A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co., as plaintiffs, and Mary A. Guy, and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, as defendants, wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R.
2 Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co., as by their complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you that, if judgment be therein given, that then, under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid

being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of September, A. D. 1901.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin, Madison.]

[Signature illegible],
Clerk of the Circuit Court of the United States
in and for the District of Wisconsin.

3 [Endorsed.] A. C. Finney, as receiver, *et al.*, plaintiffs, *vs.* Mary A. Guy, defendant. Writ of error. Filed Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

STATE OF WISCONSIN, *Supreme Court,* } *ss:*

The return to the within writ appears by the schedule hereto annexed.

The return of the justices of the supreme court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

4 STATE OF WISCONSIN:

Supreme Court.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendant and Respondent.

To the Honorable John B. Cassoday, chief justice of the State of Wisconsin:

Now come A. C. Finney as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and

Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt& Co., plaintiffs in the above-entitled cause, and complain that in the records and proceedings, and also in the rendition of judgment in a suit between said complainants as plaintiffs and Mary A. Guy and Mary A. Guy as executrix & sole residuary legatee under the will of Charles V. Guy deceased as defendant, in the supreme court of the State of Wisconsin, in which a final judgment was rendered against said plaintiffs in said suit on the 24th day of September, 1901, dismissing said action, for the reason that manifest error hath intervened in the rendition of said judgment of said supreme court of Wisconsin in this:

1. It denies plaintiff a right given by sec. 1, art. IV of the Constitution of the United States which reads:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to wit:

Revised Statutes of the U. S., sec. 905: "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

2. It is contrary to sec. 1, article IV of the Constitution of the United States and to section 905 of the Revised Statutes of the United States, in that it does not give full faith and credit to the public acts, records and judicial proceedings of the State of Minnesota, and does not give to the public acts, records and judicial proceedings of the State of Minnesota such faith and credit as they have by law and usage in the courts of the State of Minnesota.

Wherefore, said plaintiffs in said suit pray for the allowance of a

writ of error, and for such other process as may cause the
6 same to be corrected by the Supreme Court of the United States.

FRED. W. REED,
W. E. HALE, AND
F. M. WHITE,
Attorneys for A. C. Finney, as Receiver et al., said Plaintiffs.

Allowed:
JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

Madison, Wis., Sept. 27th, 1901.

I am requested by the attorney for the plaintiffs to state, as the fact is, that upon the hearing in this court, he argued orally, and in his printed brief, that not to enforce the judgment of the Minnesota court, was to refuse to give due faith and credit to the judgment of a sister State.

Dated, September 27th, 1901.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

7 [Endorsed:] Original. State of Wisconsin, supreme court. A. C. Finney as receiver, *et al.*, pl'ff- and appel., *vs.* Mary A. Guy, def't and resp't. Petition for writ of error. Filed Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

8 UNITED STATES OF AMERICA, *ss:*

To Mary A. Guy and Mary A. Guy, as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, copartners as H. Pratt & Co., are plaintiffs in error and you, Mary A. Guy, and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased,

are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff- in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John B. Cassoday, chief justice of the supreme court of the State of Wisconsin, this 27th day of September, A. D. 1901.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court, State of Wisconsin.

9 [Endorsed:] Original. A. C. Finney as receiver, *et al.*, plaintiffs, *vs.* Mary A. Guy, defendants. Citation. Filed Oct. 17, 1901. Clarence Kellogg, clerk of supreme court, Wis.

STATE OF WISCONSIN, } *ss*:
St. Croix County, }

F. S. Bell, being by me first duly sworn, deposes and says that he is sheriff of St. Croix Co. Wisconsin, that on the 1st day of Oct. A. D. 1901 at the city of Hudson in said county he duly and personally served the within writ of error on John W. Bashford, Esq., the attorney for Mary A. Guy and Mary A. Guy, as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, by delivering to and leaving with said John W. Bashford a true copy thereof, that at the time he served said writ on said Bashford he made the following endorsement thereon: "Served on J. W. Bashford Esq., the 1st day of October 1901. Fred S. Bell, sheriff, St. Croix Co., Wis."

FRED S. BELL,
Sheriff, St. Croix Co., Wis.

Subscribed and sworn to before me this 5th day of Oct., 1901.

[Seal Circuit Court, St. Croix Co., Wisconsin.]

W. J. EGBERT,
Clerk Circuit Court.

Fees.

Service	1.00
2 m. travel	.20
	$1.20

10 In the Supreme Court of the United States.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs in Error,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants in Error.

Assignment of Errors.

The plaintiff in error respectfully submits that the supreme court of Wisconsin erred in this:

1. That it denies plaintiffs a right given by sec. 1, art. IV of the Constitution of the United States which reads:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to wit:

Revised Statutes of the U. S., sec. 905: "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the
11 certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

2. That its decision and judgment is contrary to section 1, article 4 of the Constitution of the United States, and to section 905 of the Revised Statutes of the United States in that it does not give full faith and credit to the public acts, records and judicial proceedings of the State of Minnesota, and does not give to the public acts, rec-

ords and judicial proceedings of the State of Minnesota such faith and credit as they have by law and usage in the courts of the State of Minnesota.

3. In holding and deciding that to refuse to enforce plaintiffs' right of action in the courts of Wisconsin, is not violative of section 1, article 4 of the Constitution of the United States and section 905 of the Revised Statutes of the United States which provides that the public acts, records and judicial proceedings of every State shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from which they were taken.

Wherefore, the plaintiffs in error pray that the order and judgment of the supreme court of Wisconsin be reversed and that said court be directed to enter an order overruling the demurrer to plaintiffs' complaint and such other relief as to this court seems just.

FRED. W. REED,
W. E. HALE, AND
F. M. WHITE,
Attorneys for Plaintiffs in Error.

12 [Endorsed:] Original. United States Supreme Court. A. C. Finney as receiver, *et al.*, pl'ffs in error, *vs.* Mary A. Guy, def't in error. Assignments of error filed in State supreme court. Filed Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

13 Supreme Court of the United States, *ss.*

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert; as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs in Error,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendant in Error.

Know all men by these presents, that The American Bonding and Trust Company of Baltimore City, a corporation, is firmly bound unto Mary A. Guy in the sum of two hundred and fifty ($250.00) dollars, to be paid to the said Mary A. Guy, to which payment well and truly to be made it binds itself, and its successors and assigns, firmly by these presents.

Sealed with its seal and dated this 27th day of September, A. D. 1901.

Whereas, the above-named plaintiffs have prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Wisconsin;

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs if they shall fail to make
14 good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE AMERICAN BONDING & TRUST COMPANY OF BALTIMORE CITY,
By MATTHEW S. DUDGEON, *Vice-President.*
HENRY H. NOBLE. [SEAL.]

Signed, sealed and delivered in presence of—

——— ———.

15 [Endorsed:] Finney *vs.* Guy. Bond on writ of error. Copy.

16 STATE OF WISCONSIN, }
Department of Insurance. }

The American Bonding and Trust Company, of Baltimore City, located at Baltimore in the State of Maryland having furnished to the undersigned commissioner of insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now therefore, this is to certify that said American Bonding & Trust Company, has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1902 unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin, this 1st day of March, A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

I, Emil Giljohann, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 21, issued to the American Bonding & Trust Company, and on file in my office, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this 27th day of Sept., A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

17 [Endorsed:] Bond Copy I herewith approve the within bond & surety this 27th day of September 1901. John B. Cassoday chief justice supreme court of Wisconsin. Filed. Sep. 28 1901 Clarence Kellogg, clerk of supreme court, Wis.

18 Pleas before the supreme court of the State of Wisconsin, at a term thereof begun and held at the capitol in Madison, the seat of government of said State, on the second Tuesday, to wit, the thirteenth day, of August, A. D. 1901.

Present: John B. Cassoday, chief justice, John B. Winslow, Roujet D. Marshall, Charles V. Bardeen, and Joshua Eric Dodge, justices.

CLARENCE KELLOGG, *Clerk.*

Be it remembered that heretofore, to wit: on the seventh day of June, in the year of our Lord one thousand nine hundred and one, came into the office of the clerk of the supreme court of the State of Wisconsin, A. C. Finney, as receiver, American Savings and Loan Association, W. D. Hale, as receiver of said American Savings and Loan Association, Charles Wolsfield, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, agent, Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert as city treasurer of the city of Minneapolis, Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, copartners as H. Pratt & Co., and filed in said court their certain notice of appeal and undertaking, according to the statute in such case made and provided, and also the return to such appeal,
19 of the clerk of the circuit court of Pierce county, in said State, in the words and figures following, that is to say:

20 (*Notice of Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

SIR-: Please take notice that the plaintiffs in this action, above named, hereby appeal to the supreme court of the State of Wisconsin, from the judgment rendered and entered in this action in the circuit court for the county of Pierce, State of Wisconsin, on the 27th day of March, A. D. 1901, in favor of said defendants and against said plaintiffs, dismissing said action and for the sum of twenty-five dollars costs, and from the whole of said judgment.

Dated the 10th day of April, A. D. 1901.

FRED. W. REED AND
F. M. WHITE,
Plaintiffs' Attorneys.

To John W. Bashford, Esq., defendants' attorney, and to L. G. Spinney, clerk of the circuit court for Pierce county, Wis.

(Endorsements:) Original. State of Wisconsin, county of Pierce, circuit court. A. C. Finney, rec. *et al.*, plaintiffs, *v.* Mary A. Guy, defendant. Notice of appeal. Personal service of the within notice of appeal admitted this 13th day of May, 1901. John W. Bashford, attorney for defendant. F. M. White and Fred W. Reed, attorneys for plaintiffs. Personal service of within notice of appeal admitted this 4th day of June, A. D. 1901. L. G. Spinney, clerk of circuit court. Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

21 (*Undertaking on Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

(U. S. rev. stamp, 5 cents.)

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants and Respondents.

Whereas, on the 27th day of March, A. D. 1901, in the circuit court of Pierce county, Mary Guy *et al.*, the above-named respondents, recovered a judgment against said A. C. Finney *et al.*, the above-named appellants, dismissing said action and for twenty-five dollars costs. That the above-named appellants feeling aggrieved thereby intend to appeal therefrom to the supreme court of the State of Wisconsin.

Now, therefore, the American Bonding and Trust Co. of Baltimore City does hereby, pursuant to the statute in such case made and provided, undertake that the said appellants will pay all costs and damages which may be awarded against them on said appeal, not exceeding two hundred and fifty dollars; and does also undertake that if the said judgment so appealed from, or any part thereof, be affirmed, the said appellants will pay the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against said appellants on the said appeal.

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,

[SEAL.] By LOUIS AUER, *Vice-Pres't.*

Attest: FRANK J. MEYER, [SEAL.]
Ass't Sec'y.

22 (Endorsements:) Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

23 (*Certificate of Commissioner of Insurance.*)

STATE OF WISCONSIN, }
Department of Insurance. }

The American Bonding and Trust Company, located at Baltimore, in the State of Maryland, having furnished to the undersigned commissioner of insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now therefore, this is to certify that said American Bonding and Trust Company has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1902, unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin this first day of March, A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

I, Emil Giljohann, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 21, issued to the American Bonding and Trust Company, and on file in my office, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this fifth day of March, A. D. 1901.

[SEAL.] EMIL GILJOHANN,
Commissioner of Insurance.

(U. S. revenue stamp, 10 cents.)

24 (Endorsements:) June 1st, 1901. I, E. W. Helms, judge of the circuit court in and for St. Croix county, Wis., hereby allow and approve the within undertaking. E. W. Helms, circuit judge. To which ruling the defendant and respondent duly excepted. E. W. Helms, circuit judge. Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, county of Pierce, circuit court. A. C. Finney, as receiver, *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Undertaking on appeal. Personal service of the within undertaking and justification admitted this 13th day of May, 1901. John W. Bashford, attorney for defendant. F. M. White and Fred. W. Reed, attorneys for plaintiff, Minnesota. Personal service of within undertaking and certificate of justification admitted this 4th day of June, A. D. 1901. L. G. Spinney, clerk of circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

25 (*Exception to Sureties.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants and Respondents.

Please take notice that the above-named defendants except to the sufficiency of the sureties in the undertaking herein on the appeal of the above-entitled action served May 13th, 1901, for the reason that it appears that the American Bonding and Trust Co. of Baltimore City, the surety in said undertaking heretofore served on the appeal in said action is not a householder or freeholder in this State.

The defendants further except because there is only one surety to said undertaking, and that the undertaking fails to comply with the statutes in such case made and provided.

Dated May 24, 1901.

JOHN W. BASHFORD,

Attorney for the Defendants and Respondents Mary A. Guy and Mary A. Guy as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased.

To F. M. White and F. W. Reed, attorneys for plaintiffs, River Falls, Wis.

(Endorsements:) Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Notice of exceptions to sufficiency of sureties. Service of the copy of the within exceptions admitted this 24th day of May, 1901. F. M. White, att'y for plaintiffs.

26 John W. Bashford, att'y for defendants and respondents, Hudson, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

27 (*Notice of Justification.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius H. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs and Appellants,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants and Respondents.

SIR: Please take notice that the American Bonding and Trust Co. of Baltimore City, surety named in the undertaking on appeal served in the above-entitled action, on the 13th day of May, A. D. 1901, by said plaintiffs and appellants on said defendants and respondents, to which you have duly excepted, will justify as required by law before the Hon. E. W. Helms, judge of said circuit court, on the first day of June, A. D. 1901, at nine o'clock a. m. of said day, at his chambers in the city of Hudson, St. Croix county, Wis.

To John W. Bashford, Esq., attorney for said defendants and respondents,

Yours, &c.,

F. M. WHITE AND
FRED W. REED,
Attorneys for Plaintiffs and Appellants.

(Endorsements:) Pierce county, Wis. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Circuit court, Pierce county. A. C. Finney as receiver *et al.*, plaintiffs and appellants *v.* Mary A. Guy *et al.*, defendants and respondents. Notice justification surety. Due personal service within admitted this 27th day of May, A. D. 1901 John W. Bashford, att'y for defendants and respondents. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

28 (*Certificate of Commissioner of Insurance.*)

STATE OF WISCONSIN,
Department of Insurance.

The American Bonding and Trust Company, located at Baltimore, in the State of Maryland, having furnished to the undersigned commissioner of insurance due proof of its possessing the qualifica-

tions required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now therefore, this is to certify that said American Bonding and Trust Company has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1902, unless this certificate be sooner revoked.

[SEAL.] Witness my hand and official seal at Madison, Wisconsin this first day of March, A. D. 1901.

EMIL GILJOHANN,
Commissioner of Insurance.

I, Emil Giljohann, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 21, issued to the American Bonding and Trust Company, and on file in my office, and that the same is a true copy of said original and of the whole thereof.

[SEAL.] Witness my hand and official seal at Madison, Wisconsin, this twenty-ninth day of May, A. D. 1901.

EMIL GILJOHANN,
Commissioner of Insurance.

(U. S. rev. stamp, 10 cents.)

(Endorsements:) Filed by me this first day of June, 1901. E. W. Helms, circuit judge. Filed June 4, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

29 (*Summons.*)

STATE OF WISCONSIN:

Circuit Court, Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The State of Wisconsin to the said named defendants and each of them:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

FRED. W. REED AND
F. M. WHITE,
Plaintiffs' Attorneys.

P. O. address, River Falls, Pierce county, Wis.

30 (*Sheriff's Return and Service.*)

STATE OF WISCONSIN, *Pierce County,* } ss:

I, M. Nugent, sheriff of said county, hereby certify and return that I served the within summons and complaint in the within-entitled action personally on the within-named defendants Mary A. Guy and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, on the 28th day of March, A. D. 1899, at the city of River Falls in said county, by then and there delivering to and leaving with each of said defendants a true copy of said

summons and complaint, and I then and there endorsed on said copies so served the date of such service and affixed my official signature thereto.

M. NUGENT, *Sheriff*,
By O. E. GLASS, *Undersheriff*.

Fees.

Mileage, 26 miles	2.60
Service	1.50
2 copies, 158 fols	15.80

Pierce county, Wis. Filed March 31, 1899. L. G. Spinney, clerk circuit court. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

31 (*Complaint.*)

STATE OF WISCONSIN, }
Pierce County. }

Circuit Court.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings & Loan Association, Guaranty Savings & Loan Association, A. E. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

32 Plaintiffs for their complaint herein allege: That during all the times herein mentioned the American Savings & Loan Association was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota; that on the 18th day of June, 1896, William D. Hale was, by the district court in and for Hennepin county, Minnesota, duly appointed receiver of said American Savings and Loan Association, and was duly authorized and required by said court to take charge of the property and effects of said association; that the former name of said association was the American Building and Loan Association and was the same corporation under said name; that during all the times herein mentioned the People's Savings and Loan

Association and the Guaranty Savings and Loan Association were and now are corporations duly organized and existing under and by virtue of the laws of the State of Minnesota; that during all the times herein mentioned Harrison Pratt and Samuel M. Pratt were and now are copartners under the firm name and style of H. Pratt & Co.; that the Farmers' and Merchants' State bank was and now is a banking corporation duly organized and existing, with power to issue circulating notes, and receive deposits, discount bills and notes, and all the powers and privileges of the banking business, on the 6th day of January, 1888, under the laws of Minnesota, and especially under chapter 33 of General Statutes, 1878, of the State of Minnesota, and as such from the time of such
33 organization to June 20th, 1893, exercised banking powers and privileges and conducted a banking business in the city of Minneapolis, Hennepin county, Minnesota, that being its sole place of business; that on the 20th day of June, 1893, said bank became wholly and hopelessly insolvent, and on said day closed the doors of its banking office, suspended payment and ceased to do business, and on said day made a general assignment of all its property in insolvency for the benefit of all its creditors under and pursuant to the laws of the State of Minnesota, but more particularly under chapter 148, of the Laws of 1881, and acts amendatory thereof, to the St. Paul and Minneapolis Trust Company, whose name was afterward changed to the Northern Trust Company; that the said Northern Trust Company was thereafter duly discharged as such assignee and one John M. Norris was duly appointed by said court as such assignee; that said assignee duly accepted said trust and took possession of and reduced all the assets of said bank to cash; that prior to said assignment the State of Minnesota deposited with said bank large sums of money, and on June 20th, 1893, and for a long time prior thereto, there was owing the State of Minnesota from said bank the sum of $28,219.98, which sum was duly proved against the estate of said bank, and said assignee allowed said claim in full; that by the laws of the State of Minnesota the said claim of said State was a preferred claim against the estate of said bank, but not a preferred claim as to the liability of the stockholders of said bank; that the entire net proceeds of said bank's estate was the sum of $12,539.95, and that said assignee duly paid said sum over to said State of Minnesota, of which sum $7,000 was paid prior to April
34 20th, 1897, and $5,539.05 since; and that all said sums were duly applied by said State toward the payment of its said claim, and there is now due and owing the State of Minnesota from said bank the sum of $25,412.73; that said bank has no office, or officer or agent in the State of Wisconsin, and never did have; that said bank has no property or assets of any kind whatever, either in the State of Wisconsin or elsewhere, but that its entire property of every kind and nature has been converted into cash by said assignee and paid to said State of Minnesota on its claim as above set out; that said bank was, on the 20th day of June, 1893, justly indebted to each of the plaintiffs, except A. C. Finney and W. D. Hale in a large sum of money in the aggregate amounting to the sum of $91,255.84,

which sums said plaintiffs respectively had deposited with said bank prior to June 20, 1893; that all said claims were duly filed with the assignee of said bank and duly approved by him, but that no part of any of said claims has ever been paid, except the sum of $12,539.95, paid to said State of Minnesota by said assignee as above stated, and $935.99 paid to said State December 14th, 1898, by A. C. Finney, as receiver, and five per cent. of the face of all the other said claims also paid by said Finney as receiver, on December 14th, 1898; that said sums so owing to each of said plaintiffs, respectively, at said time, were as follows, to wit:

Chas. Wolsfeld	$1,015.33
C. G. Melquist	301.05
Mrs. H. Adams	4,225.38
John H. Jordan	358.15
C. G. Carr, agent	115.68
Mrs. B. D. Adams	1,093.73
35 Cassius M. Conrad	102.50
H. Pratt & Co	142.59
Samuel H. Hall	334.14
A. C. Haugan, as treasurer of Minneapolis	1,020.50
Andrew Sundberg	890.40
W. R. Sinks	3,459.71
David Muston	413.59
C. A. Munson	785.25
Kate Rank	1,737.52
Samuel H. Pratt	1,780.06
State of Minnesota	28,219.98
M. H. Townsend	422.65
Harrison Pratt	1,873.67
Charles G. Van Wert	274.79
J. D. Laddy	814.67
Merchants' Bank of Winona	10,000.00
People's Savings & Loan Association	8,008.39
Guaranty Savings & Loan Association	479.97
American Building & Loan Association	20,422.23
A. F. Leckie	250.00
H. Wehman	2,713.91

That of the total indebtedness to said creditors $13,500.00 accrued prior to October 27, 1892.

That the Merchants' Bank of Winona is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and was so organized and existing during all the times herein mentioned.

That at time of the deposit of said money with said bank by A. C. Haugan he was the duly elected and acting treasurer of the city of Minneapolis, but that since the 20th day of June, 1893, said Haugan has been succeeded in office as treasurer of said city
36 of Minneapolis by C. S. Hulbert, who as such is now the owner and holder of said claim in favor of said Haugan as reasurer of said city of Minneapolis.

That on said 20th day of June, 1893, and for more than one year prior thereto, the capital stock of said Farmers' and Merchants' State bank was $75,000, which was divided into 750 shares of $100 each; that on the 21st day of June, 1892, the defendant, Mary A. Guy, was and ever since has been the owner and holder of three shares of said capital stock; that on the 21st day of June, 1892, the entire capital stock of said bank was owned and held by the following persons and parties and in amounts set opposite their respective names, to wit:

Lannes A. Cordit	2	shares
Charles V. Guy	16	"
Mary A. Guy	3	"
R. E. Weller	5	"
Martin A. Paulson	25	"
Willis A. James	52	"
J. E. Flint	10	"
Mrs. J. W. Adams	5	"
George L. Matchan	5	"
J. W. Pence	15	"
E. H. Daniels	30	"
Jas. A. Tyler	15	"
A. C. Schuknecht	4	"
J. A. Fagan	50	"
F. H. Simpson	7	"
George W. Jenks	20	"
A. Snyder	5	"
Sarah E. Egbert	15	"
Clara A. Loomis	40	"
37 Mary J. Ellis	16	shares
Calista Andrews	20	"
Charles V. Guy, guardian of the estate of N. L. Dunbar, a minor	6	"
F. H. Schofield	15	"
James Leck	1	"
Hiram Van Nest	2	"
G. E. Williamson	10	"
Century Investment Co.	43	"
W. E. Steele	2	"
Calista Andrews, guardian of the estate of Annie Andrews, a minor	20	"
M. F. Schofield	105	"
Robert T. Lang	174	"
Lang & Schofield	12	"

That between the dates of June 20th, 1892, and June 20th, 1893, various shares of said stock were sold and transferred by the parties so owning and holding the same, and that during a portion of said time one William Harder was the owner and holder of ten shares of said stock, and one J. J. Salfinger was the owner and holder of one share of said capital stock, and that on the 20th day of June, 1893, said entire capital stock was owned and held by the following persons

and parties in amounts set opposite their respective names, except as herein below recited as to Charles V. Guy, to wit:

	Lannes A. Condit	2 shares
	M. A. Paulson	25 "
	Lang & Schofield	13 "
	H. S. Miller, guardian of the estate of N. L. Dunbar, a minor	6 "
	Century Investment Company	43 "
38	George W. Jenks	15 shares
	M. F. Schofield	55 "
	C. H. Chadbourne & Sons	5 "
	Leonard Kimball	5 "
	Charles V. Guy	16 "
	R. E. Weller	5 "
	Willis A. James	52 "
	J. E. Flint	5 "
	George L. Matchan	55 "
	E. H. Daniels	30 "
	Mary F. Schuknecht	9 "
	N. Galles	2 "
	William Trenkle	5 "
	Mary A. Guy	3 "
	Harry E. Pence and John W. See, as executors of the last will and testament of J. W. Pence, deceased	15 "
	Jas. A. Tyler	15 "
	J. A. Fagan	50 "
	Sarah E. Egbert	15 "
	Mary J. Ellis	16 "
	F. H. Simpson	6 "
	Clara A. Loomis	40 "
	Calista Andrews	20 "
	F. H. Schofield	15 "
	James Leck	1 "
	Albert Snyder	5 "
	Hiram Van Nest	2 "
	Calista Andrews, guardian of the estate of Annie Andrews, a minor	20 "
	Robert T. Lang	174 "
	Mrs. J. W. Adams	5 "

39 That on the 28th day of October, 1892, Charles V. Guy died testate, leaving a will; that at said time he was, and for more than one year prior thereto had been, the owner and holder of sixteen shares of said capital stock; that at the time of his death he was a citizen and resident of the State of Wisconsin and left property therein, and was the husband of the defendant, Mary A. Guy; that said will of Charles V. Guy was duly probated in the county court in and for the county of St. Croix, in said State of Wisconsin, and that letters testamentary as executrix were duly issued to the defendant, Mary A. Guy, by the county court of said county

on the 6th day of December, 1892; that by the terms of said will she was sole residuary legatee thereunder; that she has received property of said testator thereunder as such executrix and legatee in a sum exceeding $20,000; that ever since said 28th day of October, 1892, said Mary A. Guy, as such executrix and legatee, has been the owner and holder of sixteen shares of said capital stock; that on the 3rd day of March, 1893, said Mary A. Guy as such executrix and sole residuary legatee duly executed and delivered to the judge of said county court a bond to pay all debts and legacies of said testator under and according to section 3 of chapter 67 of the Revised Statutes of Wisconsin of 1849, the same being section 3795 of the Statutes of Wisconsin of 1898; that during all the times herein mentioned said Mary A. Guy was and now is a citizen and resident of the State of Wisconsin; that no time has been fixed in which creditors may present their claims against the estate of said deceased for allowance and no notice of such limitations has been ordered or given.

40 That the General Statutes of the State of Minnesota of 1878 contain the following provisions, which provisions are also in the General Statutes of Minnesota of 1894 in these sections, to wit:

SEC. 2494 (being sec. 14, chap. 33, G. S. 1878). The shares in such bank are personal property, and transferable on the books of the bank in such manner as may be agreed upon in the articles organizing such bank, or prescribed in its by-laws; and every person becoming a stockholder therein shall, in proportion to his interest succeed to all the rights and be subject to all the liabilities of prior shareholders; no change shall be made in the articles organizing such bank whereby the rights, remedies, or securities of existing creditors shall be in any way impaired; and any association constituting such bank shall not be dissolved by the death or insanity of any one of the shareholders therein.

SEC. 2501 (being sec. 21, chap. 33, G. S. 1878). The president and cashier of every bank formed pursuant to the provisions of this chapter, shall at all times keep a true and correct list of the names of all the shareholders of such bank, with the amount of stock held by each, the time of transfer, and to whom transferred, and shall file a copy of such list in the office of the register of deeds of the county wherein such bank is located, and also in the office of the auditor of State, on the first Monday in January and July in each year; and stockholders in each bank shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such bank, and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

41 SEC. 3419 (being sec. 414, chap. 34, G. S. 1878). Persons holding stock in a corporation as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be, if they

were respectively living and competent to act, and held the stock in their own names.

SEC. 5905 (being sec. 17, chap. 76, G. S. 1878). Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

SEC. 5906 (being sec. 18, chap. 76, G. S. 1878). The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

SEC. 5907 (being sec. 19, chap. 76, G. S. 1878). If, on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases.

SEC. 5911 (being sec. 23, chap. 76, G. S. 1878). Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provis-
42 ions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment.

That during all the times herein mentioned said laws were, and now are, in full force and effect; and said sections 2494 and 2501 are part of chapter 33 of said statutes, and that said bank was organized under said chapter.

That the supreme court of the State of Minnesota has rendered decisions relating to the liability of stockholders in banks organized under the laws of said State of Minnesota and as to the proper method of enforcing such liability and that said decisions are reported in the Minnesota Reports and in the Northwestern Reporter in the following cases, to wit:

Allen *vs.* Walsh, 25 Minn. 543.
Harper *vs.* Carroll, 62 Minn. 152.
Harper *vs.* Carroll, 66 Minn. 487.
Hanson *vs.* Davidson, 76 Northwestern Reporter 254.
Olson *vs.* Cook, 57 Minn. 552.
Danforth *vs.* National Chemical Co., 68 Minn. 308.
Holland *vs.* Duluth I. M. & D. Company, 65 Minn. 324.
First Nat. Bank of Deadwood *vs.* Gustin M. C. M. Co., 42 Minn. 327.
43 Rule *vs.* Omega S. & G. Co., 64 Minn., 326.
Overmire *vs.* Haworth, 48 Minn. 372.

Dodge *vs.* M. P. Roofing Co., 16 Minn. 368 (Gil. 327).
First Nat'l Bank *vs.* Northern Trust Co., 69 Minn. 176.
State *vs.* Bank of New England, 73 N. W. Rept. 153.
American Savings & L. Ass'n *vs.* Farmers' & Merchants' St. Bk., 65 Minn. 139.
Gebhard *vs.* Eastman, 7 Minn. 40 (Gil. 56).
Hencke *vs.* Twomey, 58 Minn. 550.
Dent *vs.* Matteson, 73 Northwestern Rep. 416.
Hantzch *vs.* Massolt, 61 Minn. 361.
In re Martin's Estate, 56 Minn. 420.
Minneapolis Baseball Co. *vs.* City Bank, 66 Minn. 441.

That the liability of stockholders in such banks, and the methods of enforcing the same under said decisions and laws are: That all the stockholders in such banks are liable for all debts of the bank in double the amount of stock held by them respectively in addition to the subscription price of said stock; that the proper method of enforcing such liability is, in the first instance, for a creditor to bring an action at the domicile of the corporation, against the corporation and all of its stockholders, over whom jurisdiction can be obtained, on behalf of all the creditors of such bank who shall come into said action so commenced and that judgment shall be therein entered in favor of each creditor in the amount owing him by said bank, and against each stockholder, over whom the court
44 shall have acquired jurisdiction, in double the amount of stock held by him, but that no more shall be collected therein than is sufficient to satisfy such judgment in favor of said creditors, and that a receiver be appointed in said action to collect said judgment and to distribute the same to said creditors *pro rata* and also to enforce the liability of stockholders residing in jurisdictions other than that in which said suit is brought; that the liability of such stockholders is several and not joint and that judgment against only a part of such stockholders does not have the effect of releasing others against whom no judgment was obtained in such action; that such action is not the exclusive remedy, but if any stockholders were omitted from such original action, because the court could not acquire jurisdiction of them, or for any other cause, the liability could be enforced against such omitted stockholders by proceedings against them in an action ancillary to the original action in any jurisdiction in which they might be found, and where they can be served with process; that the obligation of stockholders is not penal in its nature, but is purely contractual, and contains all the elements of a contract and can be enforced as such, and that an action to enforce such liability is an action on contract; that the judgment in such original action, determining the amount of the corporate debts remaining unpaid, is binding on the stockholders whether parties to the action or not; that the judgment against the corporation is in effect a judgment against the stockholders in their corporate capacity, and the stockholders are represented by the corporation in such action; that the decree in such action is a final and conclusive determination

of the amount for which the stockholders are liable; that the
45 stockholders are so liable for all debts contracted both before and after they become stockholders; that all creditors who do not come into such action when required so to do by order under said section 5911 within the time therein allowed are precluded from all benefit of the judgment, to be rendered, and from any distribution of the proceeds thereunder; that where a person becomes a stockholder in a corporation organized under the laws of a foreign State he contracts with reference to all the laws of the State under which the corporation is organized and that such laws become a part of his contract and that his liability as such stockholder may be enforced by creditors wherever they can obtain jurisdiction of the parties; that in an action to enforce stockholders' liability in a jurisdiction where the corporation is a non-resident corporation, if judgment cannot be obtained against the corporation, such action will be maintained without such judgment; that the double liability of stockholders in all banks imposed by section 2501 is not repugnant to the constitution; that the liability of stockholders is not an asset of the corporation and cannot be enforced by the assignee or receiver of the corporation in insolvency, but is a liability direct to the creditors; that it is not necessary for creditors to procure a judgment against the bank before commencing the suit to enforce the stockholders' liability; that liability of stockholders is a primary and principal one and not as surety for the corporation; that the liability of a stockholder survives his death and is enforceable against his estate whether the corporate indebtedness was incurred before or after his death and whether the corporation became insolvent before or after his death; that he contracts for a liability which is to
46 continue at least until his stock is transferred to another on the books of the company, and that the liability of the estate of a deceased stockholder for corporate debts is not a claim that can be presented to the probate court for allowance, but must be recovered in an action against the stockholders; that shares in such bank are personal property and transferable on the books of the company and every person becoming a stockholder therein shall, in proportion to his interest, succeed to all the rights and be subject to all the liabilities of prior shareholders; that a legatee is liable to an action by a creditor of the testator to recover the value of any legacy received by him and that an executrix is liable to the amount of property of the estate in her hands.

That in the district court, in and for the county of Hennepin, in said State of Minnesota, on or about the month of January, 1894, an action to enforce the liability of stockholders of said bank, under and by virtue of the laws and constitution of the State of Minnesota, was duly instituted by the American Savings and Loan Association, a creditor of said bank, in behalf of all creditors who should come into said action and prove their claims therein and against said bank, and all the stockholders of said bank were named as parties defendant therein; that such proceedings were duly had in said cause under and pursuant to the laws of the State of Minnesota and the decisions of the supreme court of said State; that said court

duly made and filed its findings of fact and conclusions of law, and judgment was duly rendered thereon in said district court on the 28th day of April, 1897, in favor of said plaintiff, The American Savings and Loan Association in the sum of $20,422.23 and
47 in favor of the other creditors of said bank in the sums set opposite their respective names below, to wit:

Chas. Wolsfeld	$1,015.33
C. G. Melquist	301.05
Mrs. H. Adams	4,225.38
John H. Jordan	358.15
C. G. Carr, agent	115.68
Mrs. B. D. Adams	1,093.73
Cassius M. Conrad	102.50
H. Pratt & Co	142.59
Samuel H. Hall	334.14
A. C. Haugan, as city treas. of Minneapolis	1,020.50
Andrew Sundberg	890.40
W. R. Sinks	3,459.71
David Huston	413.59
C. A. Munson	785.25
Kate Rank	1,737.52
Samuel Pratt	1,780.06
State of Minnesota	21,219.98
M. H. Townsend	422.65
Harrison Pratt	1,873.67
Charles G. Van Wert	274.79
J. D. Laddy	814.67
Merchants' Bank of Winona	10,000.00
People's Savings & Loan Association	8,008.39
Guaranty Savings & Loan Association	479.97
American Building & Loan Association	20,422.23
A. E. Leckie	250.00
H. Wehman	2,713.91

together with interest on all of said sums since the 20th day of June, 1893, at the rate of seven per cent. per annum, and
48 against each and all of the resident stockholders of said bank in amounts set opposite their names below, respectively, to wit:

Lannes A. Condit	$400.00
Martin A. Paulson	5,000.00
Lang & Schofield	2,600.00
Century Investment Company	8,600.00
George W. Jenks	3,000.00
Charles H. Chadbourn, Chas. N. Chadbourn, and Rodney W. Chadbourn, partners as C. H. Chadbourn & Sons	1,000.00
Leonard Kimball	1,000.00
Willis A. James	10,400.00
George L. Matchan	11,000.00
Mary F. Schuknecht	1,800.00

Harry E. Pence and John W. See as executors of the last will and testament of John W. Pence, deceased	3,000.00
James A. Tyler	3,000.00
James A. Fagan	10,000.00
Sarah F. Egbert	3,000.00
Mary J. Ellis	3,200.00
Clara A. Loomis	8,000.00
Calista Andrews	8,000.00
James Leck	200.00
Albert Snyder	1,000.00
John H. Van Nest, Robert A. Van Nest and Rachel F. Van Nest as executors of the last will and testament of Hiram Van Nest, deceased	400.00
Robert T. Lang	34,800.00
Nicholas Galles	400.00
William Trenkle	1,000.00

49 and that the judgment was also duly entered against certain other persons as secondarily liable as to a part of said sums, but that all said persons are utterly insolvent and nothing whatever can be collected from any of them except one William E. Steele, who is liable in the sum of $400.00; that the names of such persons are as follows and the several amounts for which they are so liable are set opposite their names below respectively, to wit:

George F. Williamson	$2,000.00
William Harder	2,000.00
George W. Jenks	2,000.00
William E. Steele	400.00
George L. Matchan	10,000.00
Robert T. Lang	12,000.00
J. J. Salfinger	200.00
Lang & Schofield	200.00

and it was therein further adjudged and decreed that the amount of the debts of said bank still due said plaintiff therein and said other creditors of said bank, at the date of said judgment, was the aggregate sum of $106,471.71, and that the amount due said creditors from said bank on said June 20th, 1893, was the aggregate sum of $91,255.84; that of said sum of $106,471.71 due said creditors as aforesaid,

$6,798.00 accrued prior to June 20th, 1892,
13,500.00 accrued prior to October 27th, 1892,
13,500.00 accrued prior to November 2nd, 1892,
27,700.00 accrued prior to January 18th, 1893,
40,320.00 accrued prior to March 8th, 1893,
40,320.00 accrued prior to March 17th, 1893,
42,330.00 accrued prior to April 15th, 1893,
46,240.00 accrued prior to April 27th, 1893,
50 46,410.00 accrued prior to May 4th, 1893,
46,410.00 accrued prior to May 12th, 1893, and
49,267.00 accrued prior to June 15th, 1893,

and it was further found and adjudged therein that the assets of said bank were totally inadequate to pay its debts in a sum exceeding $100,000.

That of said judgment debtors composition settlements have been made with the following by said receiver under orders of said court and the judgments as to them have been discharged, to wit:

Leonard Kimball,

Harry E. Pence and John W. See as executors of the last will and testament of John W. See, deceased.

James A. Tyler,

Calista Andrews,

John H. Van Nest, Robert A. Van Nest, and Rachel F. Van Nest as executors of the last will and testament of Hiram Van Nest, deceased.

Mary F. Schuknecht,

James A. Fagan,

James Leck.

That the sums received in said settlements are included in said sum of $8,224.85 below recited as the sum received and collected by said receiver, and that none of said judgment debtors whose liabilities were compromised were solvent, at the time of such settlements, excepting said Harry E. Pence and John W. See, as executors, as aforesaid, and John H. Van Nest, Robert A. Van Nest and Rachel F. Van Nest, as executors, as aforesaid, but that the largest sums that could be obtained in any case from the persons and par-
51 ties so settled with were collected and such compromises were made, because said judgments against them were uncollectable.

That pursuant to the provisions of section 5911 above recited an order was duly made July 2nd, 1894 and duly published and entered in said action requiring all creditors of said bank to intervene therein and file their complaints with the clerk of the district court aforesaid, within six months from the publication of said order, and that any and all creditors of said bank who should fail to file their claims pursuant to said order should be forever debarred and precluded from participating in the proceeds of said litigation; that the time to so intervene in said cause expired long since on or about January 1895 and that the only creditors of said bank who came into said action are those hereinbefore set out, and that they are the only persons and parties holding claims against the stockholders of said bank; that by the terms of said judgment it was provided therein as follows to wit:

That the plaintiff is entitled to the appointment of a receiver herein, and upon an informal application made by the plaintiff to this court, either before or after entry of judgment herein, a formal order will be made herein appointing A. C. Finney, Esq., receiver herein, for the purpose of collecting and enforcing the respective liabilities of said defendant stockholders, and that by such order he be authorized and empowered to proceed against those of the defendant stockholders residing in other jurisdictions, in such other jurisdictions, for the purpose of enforcing the liabilities of such

stockholders, and with full power and authority to distribute the proceeds of this action among the parties entitled thereto
52 after final paying in full out of said proceeds the costs and expenses already incurred and the attorneys' fees of plaintiff herein, and all future costs and disbursements, with such compensation and attorneys' fees as may be allowed hereafter by the court.

That pursuant to said judgment an order was on the 20th day of April 1897 duly made and entered in said cause appointing said A. C. Finney such receiver with the powers and duties in said judgment and said order recited; a true copy of said order is hereto attached marked Exhibit "A" and hereby made a part of this complaint; that said Finney thereupon duly qualified as such receiver and proceeded to collect such judgment and has collected therein and from non-resident stockholders against whom no judgment was obtained, the sum of $8,224.85; that execution has issued on all of said judgments so uncollected and every effort has been made to collect the same; that the judgments so uncollected are uncollectable and of no value whatever; that the total amount due the said creditors of said bank, at the time of the entry of said judgment, and for which amount said judgment was entered, was the sum of $106,471.71; that there now remains due the said creditors of said bank more than $100,000, and the total sum now in said receiver's hands to be applied toward the payment of said judgment will not exceed the sum of $1,000.00; that stockholders Calista Andrews and Calista Andrews as guardian of Aimee Andrews, J. E. Flint, F. H. Daniels and R. E. Weller, who were non-residents of said State of Minnesota and not within the jurisdiction of said court and against whom no judgment was entered have compromised and settled their liabilities as such stockholders
53 under the orders of said court; that it is and will be impossible to collect from stockholders of said bank the further sum of $5,275.15, and the sum that can be collected in the aggregate will not exceed $9,000.00 aside from the liability of defendant Guy, so that the total sum that can be realized will be less than $13,500.00; that there are no parties or persons in the State of Wisconsin, other than the defendant, who are liable as stockholders in said bank; that during the times herein mentioned Calista Andrews, Aimee Andrews, Charles V. Guy, Mary A. Guy, E. H. Daniels, J. E. Flint, H. S. Miller, N. L. Dunbar, R. E. Weller, Mrs. J. W. Adams and F. H. Schofield were and each of them were non-residents of the State of Minnesota and have no property therein.

That the defendant, Mary A. Guy, is liable to creditors of said bank, the plaintiffs herein, in the sum of $3,800.00 with interest on the same since April 28th, 1897 at the rate of seven per cent. per annum, and that this action is brought to enforce said liability.

Wherefore plaintiffs pray judgment:

1. That Mary A. Guy pay plaintiffs $3,800.00 with interest thereon since April 28, 1897 at the rate of seven per cent. per annum with costs and disbursements and the plaintiffs have execution therefor.

2. That A. C. Finney be appointed receiver herein to collect said

amount and to distribute the same *pro rata* among the other plaintiffs.

3. That this court make such orders and enter such further judgments herein as may be necessary to enforce such liability of defendant for the benefit of plaintiffs.

54 4. That this court give such other and further relief as the court can grant in the premises.

FRED W. REED AND
F. M. WHITE,
Plaintiff's Attorneys.

"EXHIBIT A."

STATE OF MINNESOTA, }
County of Hennepin, Fourth Judicial District. }

District Court.

AMERICAN SAVINGS AND LOAN ASSOCIATION
vs.
FARMERS' AND MECHANICS' STATE BANK, a Corporation; Northern Trust Company (Formerly the St. Paul and Minneapolis Trust Company), a Corporation, as Assignee of said Defendant Bank; Lannes A. Condit, Charles V. Guy, Mary Guy, R. E. Weller, Martin A. Paulson, Willis A. James, J. E. Flint; Robert T. Lang and Morton F. Schofield, Partners as Lang & Schofield; Mrs. J. W. Adams, George L. Matchan, Harry E. Pence, William Monypenny, and John W. See, as Executors of the Estate of John W. Pence, Deceased; Mary F. Schuknecht, F. H. Daniels, James A. Tyler, James A. Fagan, F. H. Simpson, Sarah E. Egbert, Clara A. Loomis, Mary J. Ellis, Calista
55 Andrews, F. H. Schofield, James Leck, A. Snyder, John H. Van Nest, Robert A. Van Nest, and Rachel E. Van Nest, Deceased; George F. Williamson, Century Investment Company, a Corporation; Northern Trust Company, as Assignee of said Century Investment Company; William E. Steele, Aimee Andrews, a Minor; Calista Andrews, as Guardian of the Estate of said Aimee Andrews; Robert T. Lang, George W. Jenks, Morton F. Schofield, N. L. Dunbar, a Minor; Charles V. Guy, as Guardian of the Estate of said N. L. Dunbar; N. Galles, J. J. Salfinger, H. S. Miller, as Guardian of the Estate of said N. L. Dunbar; Charles H. Chadbourne and Rodney W. Chadbourne, Partners as C. H. Chadbourne & Sons; L. Kimball, William Trenkle, and William Harder, Defendants.

It having been made to appear to the court, that it is necessary that a receiver be appointed in the above-entitled action, for the purpose of collecting and enforcing the liabilities of the different defendant stockholders in said action, and for the purpose of instituting actions against certain of said defendant stockholders residing outside of the jurisdiction of this court, in such other jurisdictions, for the purpose of enforcing the liability of such non-resident

stockholders, as well as for the purpose of distributing the proceeds of all the liabilities of all the stockholders of said bank, be-
56 tween the parties who have joined plaintiff and have become parties plaintiff in said action, and whose claims have been allowed by the findings of the court herein:

And it having been made to appear further to the court that Albert C. Finney is a proper and competent person to act as such receiver:

Now, therefore, upon application of Fred W. Reed, Esq., as attorney for said plaintiff herein, made in accordance with findings and conclusions of law, made and filed herein, upon the trial of said action, issue having been joined therein:

It is hereby ordered and decreed, that Albert C. Finney, Esq., be and he hereby is appointed receiver in the above-entitled action, and that, upon giving a bond in the sum of five thousand ($5,000) dollars conditioned upon the faithful discharge upon his part of the duties of said office or receiver in this action, he be authorized and directed, with all reasonable speed to enforce the liabilities of the several defendants mentioned in the conclusions of law and order for judgment filed in this action, and with all reasonable speed and by all legal and proper means, to collect and enforce the payment of the judgment against said several defendant stockholders to be rendered and entered in said action, in accordance with the law and terms of said judgment, as far as the same is collectable and enforcible by any and all remedies and means known to the law; or if he shall so advise under the advice and direction of the court, to compromise and settle the same, or any part of the same; and that he be further authorized and directed as such receiver in this action, to commence an action or actions, in any proper court in any
57 other jurisdiction in which any of the above-named defendant stockholders reside, who are non-residents of this State, for the purpose of enforcing, in such jurisdiction, against any of the said defendant stockholders residing therein, the liability of said parties respectively as stockholders in said Farmers' and Merchants' State bank to double the amount of stock held by said parties respectively in said bank, and prosecute said actions to their final determination, or until the same are compromised and settled if he shall deem it advisable and to the best interests of the plaintiff and the creditors who have joined as parties plaintiff in this action, to compromise and settle said causes of action, or any of them for any amount less than the full amount of said liability:

And he is further, as such receiver, authorized and directed to distribute any and all of the proceeds coming into his hands by virtue of his office as such receiver, *pro rata* among the plaintiff and the other parties who have joined the plaintiff in said suit, and have exhibited their claims in this action, and whose claims have by the findings in this action been allowed by the court, in proportion to their respective claims as allowed by the court in this action, and as indicated by the court in said findings and conclusions, after having, however, first paid out of the first money received by him as such receiver, to the plaintiff's attorney herein, any and all sums which may at any time be allowed by the court to said attorney for

his services herein in conducting and prosecuting said action to final judgment, and on appeal to the Supreme Court, if any appeal shall be taken, as well as all other costs and disbursements which have been or may hereafter be incurred by plaintiff in this action in the prosecution of the same, as well as any and all expenses that
58 may be hereafter incurred by said receiver in the execution of his trust, including all proper attorneys' and counsel's fees, for services performed for said receiver in the enforcement of any and all of said liabilities, and also including such compensation as shall hereafter be by the court allowed said receiver for his services as such; it being the intention that all the different items of costs of said receivership, as well as attorneys' fees, and costs, and disbursements incurred or hereafter to be incurred in this action, shall be paid in full out of the moneys received and collected by the receiver in this action, before the proceeds of this action be in whole or in part distributed among the parties plaintiff entitled to such distribution.

And it is further ordered that said Albert C. Finney be and hereby is directed and required as such receiver to keep a full and accurate account of all his acts and doings as such receiver herein, and to report the same to the court, from time to time, as he may be hereafter directed by the order of the court:

And the said receiver is hereby authorized and empowered to employ such counsel and attorneys as he may deem necessary to manage in his behalf such actions, suits or other affairs as have arisen or may arise in the execution of his said trust and in the discharge of his duties as such receiver, and to advise such receiver in relation to the performance of his duties.

Dated April 20th, 1897.

By the court,

DAVID F. SIMPSON,
District Judge.

59 STATE OF MINNESOTA, } ss:
County of Hennepin, }

A. C. Finney being first duly sworn deposes and says that he, as receiver, is one of the plaintiffs in the foregoing and above-entitled action; that the several parties plaintiff therein, including this affiant, are united in interest and pleading together therein; that affiant has read the foregoing complaint and knows the contents thereof; that said complaint is true to affiant's own knowledge, except as to matters therein stated on information and belief, and as to those matters that he believes it to be true.

A. C. FINNEY.

Subscribed and sworn to before me this 27th day of March, A. D. 1899.

[SEAL.] REUBEN TOMLINSON,
Notary Public, Hennepin County, Minnesota.

(Endorsements:) Pierce county, Wis. Filed March 31, 1899. L. G. Spinney, clerk circuit court. (Original.) Circuit court, ——

county. A. C. Finney as rec. *et al.*, plaintiffs *vs.* Mary A. Guy *et al.*, defendants. Summons and complaint. Fred. W. Reed and F. M. White, plaintiff's att'ys. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

60 (*Demurrer.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. D. B. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. E. Lacke, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The defendant above named, Mary A. Guy, by John W. Bashford, her attorney, separately demurs to the complaint of the plaintiff in this action and specifies as ground of objection thereto that it appears upon the face of the complaint:

1st. That the circuit court of Pierce county have no jurisdiction of the subject-matter of said action.

2nd. That the plaintiffs have not the legal capacity to sue.

3rd. That there is a defect in parties plaintiff in this that it appears upon the face of the complaint that none of the plaintiffs except A. C. Finney as receiver, has any interest in the subject-matter of said action.

4th. That there is a defect in parties defendant in this that Mary A. Guy as executrix and sole legatee under the will of Charles V. Guy, deceased, is not a necessary or proper party defendant.

5th. That several causes of action have been improperly united.

6th. That this action was not commenced within the time limited by law. By section 3844 of the Revised Statutes of the State
61 of Wisconsin, and by section 3274 of the Revised Statutes of the State of Wisconsin.

7th. That the complaint does not state facts sufficient to constitute a caus. of action.

JOHN W. BASHFORD,
Att'y for Defendant Mary A. Guy.

(Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *vs.* Mary A. Guy, *et al.*, defendants. Service of a copy of the within demurrer admitted this 17th day of April, 1899. Fred. W. Reed and F. M. White, att'ys for pl'ffs. John W. Bashford, att'y for defendants, Hudson, Wisconsin. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis. Copy mailed to F. M. White, River Falls, April 15, 1899.

62 (*Demurrer.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. D. B. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. E. Lacke, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The defendant above named, Mary A. Guy, as executrix and sole legatee under the will of Charles V. Guy, deceased, by John W. Bashford, her attorney, separately demurs to the complaint of the plaintiff in this action and specifies as ground of objection thereto that it appears upon the face of the complaint:

1st. That the circuit court of Pierce county has no jurisdiction of the subject-matter of said action.

2nd. That the plaintiffs have not the legal capacity to sue.

3rd. That there is a defect in parties plaintiff in this that it appears upon the face of the complaint that none of the plaintiffs except A. C. Finney as receiver, has any interest in the subject-matter of said action.

4th. That there is a defect in parties defendant in this that Mary A. Guy is not a necessary or proper party defendant.

5th. That several causes of action have been improperly united.

6th. That this action was not commenced within the time limited by law. By section 3844 of the Revised Statutes of the State
63 of Wisconsin, and by section 3274 of the Revised Statutes of the State of Wisconsin.

7th. That the complaint does not state facts sufficient to constitute a cause of action.

JOHN W. BASHFORD,
Att'y for Defendant Mary A. Guy as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased.

(Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *vs.* Mary A. Guy *et al.*, defendants. Service of a copy of the within demurrer admitted this 15th day of April, 1899. Fred. W. Reed and F. M. White, att'ys for pl'ffs. John W. Bashford, att'y for defendants, Hudson, Wisconsin. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

64 (*Order of Court Overruling Demurrer.*)

Pierce county, Wis. Filed July 10, 1899. L. G. Spinney, clerk circuit court.

STATE OF WISCONSIN, }
County of Pierce. }

In Circuit Court.

At a general term of said circuit court, begun and held in and for said county at the court-house, in the village of Ellsworth, said county, commencing May 8th, 1899, to wit, May 22d, 1899, Hon. A. J. Vinje, judge, presiding.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The above-entitled cause having come on to be heard in its regular order on the calendar before the court, upon a demurrer interposed by defendant to the complaint herein, Messrs. F. M. White and Fred. W. Reed appeared for the plaintiffs and John W. Bashford,

Esq., for the defendant. The court having heard the argument and all matters produced on behalf of both parties and having duly considered the same:

It is ordered, that said demurrer be and the same is hereby overruled in all things and that defendant have leave to answer, within twenty days after service of notice of the entry of this order and upon payment of ten dollars costs.

Dated, June 30th, 1899.

By the court,

A. J. VINJE, *Judge.*

65 (Endorsements:) State of Wisconsin, county of Pierce, circuit court. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy, defendant. Order overruling demurrer. Recorded in Order Book F, page 188. F. M. White, Fred. W. Reed, att'ys for plaintiffs, New York Life building, Minneapolis, Minn. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

66 (*Exception to Order.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The defendants in this action except to the order made by the court herein on the 30th day of June, 1899, and filed with the clerk of the circuit court of Pierce county on the 1st day of July, 1899, which said order and notice of entry of same was served on me on July 5th, 1899, to the whole of said order and to each and every part thereof.

JOHN W. BASHFORD,
Attorney for Defendants.

(Endorsements:) Pierce county, Wis. Filed July 10, 1899. L. G. Spinney, clerk circuit court. State of Wisconsin, in circuit court for Pierce county. A. C. Finney *et al.*, plaintiffs *vs.* Mary A. Guy *et al.*, defendants. John W. Bashford, att'y for defendants, Hudson, Wisconsin. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

67 (*Notice of Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

Please take notice that Mary A. Guy and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased defendant and appellant in this action, hereby appeals to the supreme court of the State of Wisconsin, from the whole of the order made in this action by the circuit court for Pierce county aforesaid, which order was entered of record in said circuit court on the 1st day of July, A. D. 1899.

A copy of the said order appealed from is hereunto annexed.

JOHN W. BASHFORD,
Defendant's Attorney.

To F. M. White, Esq., Fred. W. Reed, Esq., plaintiffs' attorneys, and to L. G. Spinney, clerk of the circuit court for Pierce county, Wisconsin.

Dated the 25th day of July, A. D. 1899.

(Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

68 STATE OF WISCONSIN, }
County of Pierce. }

In Circuit Court.

At a general term of said court, begun and held in and for said county at the court-house, in the village of Ellsworth, said county, commencing May 8th, 1899, to wit, May 22d, 1899, Hon. A. J. Vinje, judge, presiding.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association, Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The above-entitled cause having come on to be heard in its regular order on the calendar before the court upon a demurrer interposed by defendant to the complaint herein, Messrs. F. M. White and Fred. W. Reed appeared for the plaintiffs and John W. Bashford, Esq. for the defendant. The court having heard the argument and all matters produced on behalf of both parties and having duly considered the same:

It is ordered, that said demurrer be and the same is hereby overruled in all things and that defendant have leave to answer, within twenty days after service of notice of the entry of this order and upon payment of ten dollars costs.

Dated, June 30th, 1899.

By the court,

(Signed) A. J. VINJE, *Judge.*

69 (Endorsements:) Order recorded in Order Book F, page 188. Pierce county, Wis. Filed July 26, 1999. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, in circuit court, for Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Notice of appeal to supreme court. Service of a copy of the within notice of appeal admitted this 25th day of July, 1899. F. M. White & Fred W. Reed, att'ys for plaintiff and repondent. Service of a copy of the within notice admitted this 26th day of July, 1899. L. G. Spinney, clerk. Filed July 29, 1899, Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

70 (*Undertaking on Appeal.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

Whereas on the 30th day of June, A. D. 1899, the circuit court for Pierce county, Wisconsin, made an order that the demurrer of the appellants be, and the same is hereby overruled in all things, and that the appellants have leave to answer within twenty days, after the service of notice of the entry of said order upon the payment of ten dollars cost-, and

Whereas said order was entered in the office of the clerk of the circuit court for Pierce county, on the first day of July, 1899, and a notice of the entry of said order was served upon appellants on the fifth day of July, 1899. And the above-named appellants, feeling aggrieved thereby, intend to appeal therefrom to the supreme court of the State of Wisconsin;

Now therefore, we, Mary A. Guy, and Mary A. Guy as executrix and sole residuary legatee under the will of Charles V. Guy, deceased, of River Falls, in the county of Pierce and State of Wisconsin, and Roderick McGregor and G. I. ApRoberts, of River Falls, in the county of Pierce and State of Wisconsin, do hereby, pursuant to the statute in such case made and provided, undertake that
71 the said appellants will pay all costs and damages which may be awarded against said appellants on said appeal, not exceeding two hundred and fifty dollars; and do also undertake that if the said judgment so appealed from, or any part thereof, be affirmed, the said appellants will pay the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against said appellants on the said appeal.

MARY A. GUY.
RODERICK McGREGOR.
G. I. APROBERTS.

STATE OF WISCONSIN, } ss:
Pierce County, }

Roderick McGregor, being duly sworn, says he is one of the subscribers to the foregoing undertaking; that he is a resident of the State of Wisconsin, and is worth the sum of five hundred dollars over and above all his debts and liabilities, in property within the State of Wisconsin, not by law exempt from execution.

RODERICK McGREGOR.

Subscribed and sworn to before me, this 24th day of July, A. D. 1899.

WILLIAM H. SANDERSON,
Notary Public.

STATE OF WISCONSIN, } ss:
Pierce County, }

G. I. ApRoberts, being duly sworn, says he is one of the subscribers to the foregoing undertaking; that he is a resident of the State of Wisconsin, and is worth the sum of five hundred dollars over and above all his debts and liabilities, in property within the State of Wisconsin, not by law exempt from execution.

G. I. APROBERTS.

Subscribed and sworn to before me, this 24th day of July, A. D. 1899.

WILLIAM H. SANDERSON,
Notary Public.

72 (Endorsements:) Pierce county, Wis. Filed July 26, 1899. L. G. Spinney, clerk circuit court. Original. State of Wisconsin, in circuit court for Pierce county. A. C. Finney, as receiver, *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Undertaking on appeal. Service of a copy of the within undertaking on appeal admitted this 25th day of July, 1899. Fred W. Reed & F. M. White, att'ys for plaintiffs. John W. Bashford, att'y for appellants, Hudson, Wisconsin. Service of a copy of the within undertaking admitted this 26th day of July, 1899. L. G. Spinney, clerk. Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

73 (*Clerk's Certificate.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfield, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

STATE OF WISCONSIN, } ss:
Pierce County, }

I, L. G. Spinney, clerk of the circuit court for Pierce county, do hereby certify that the foregoing constitutes the entire record in the above-entitled action, and are all the necessary original papers on file and of record in my office in said action, and that the same are transmitted to the supreme court of said State of Wisconsin pursuant to a notice of appeal and undertaking hereto attached, and which have been duly served upon me, pursuant to the statute in such case made and provided.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 26th day of July, A. D. 1899.

[SEAL.] L. G. SPINNEY, *Clerk.*

(Endorsements:) Pierce county, Wis. Filed April 27, 1900. L. G. Spinney, clerk circuit court. A. C. Finney as rec. *et al. v.* Mary H. Guy, executrix *et al.* Filed July 29, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

74 (*Remittitur.*)

Be it remembered, that at a term of the supreme court of the State of Wisconsin, begun and held at the capitol, in Madison, the seat of government of said State, on the second Tuesday, to wit, on the ninth day of January, A. D. 1900, on the twentieth day of the term, to wit: on the 20th day of March, A. D. 1900. Present, John B. Cassoday,

chief justice, John B. Winslow, R. D. Marshall, Charles V. Bardeen and Joshua E. Dodge, justices of said court, the following proceedings were had, *inter alia*, to wit:

A. C. FINNEY, as Receiver, &c. ET AL., Respondents, *vs.* MARY A. GUY ET AL., Appellants. } Appeal from Circuit Court, Pierce County, State of Wisconsin.

This cause came on to be heard on appeal from the order of the circuit court of Pierce county, and was argued by counsel. On consideration whereof: it is now here ordered and adjudged by this court, that the order of the circuit court of Pierce county, entered herein on the first day of July, A. D. 1899, be and the same is hereby reversed, with costs against the said respondents taxed at the sum of ninety-six and $\frac{25}{100}$ dollars ($96.25).

And that this cause be and the same is hereby remanded to the said circuit court, for such further proceedings therein as may be according to law.

Justice Dodge dissents.

STATE OF WISCONSIN, *Supreme Court,* } *ss:*

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original order and judgment of the court in the above-entitled cause, and that it is a correct transcript therefrom, and of the whole thereof.

75 In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Madison, this twenty-fifth day of April, A. D. 1900.

[SEAL.] CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

(Endorsements:) State of Wisconsin. Supreme court. A. C. Finney, as receiver, *et al.*, respondents, against Mary A. Guy, *et al.*, appellants. Remittitur. Recorded in Order Book F, page 256. Pierce county, Wis. Filed April 27, 1900. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

76 (*Opinion of Supreme Court.*)

A. C. FINNEY, as Receiver, &c., ET AL., Respondents,
vs.
MARY A. GUY ET AL., Appellants.

Appeal from the circuit court for Pierce county.

Action to enforce the statutory liability of a stockholder of a bank to creditors under the laws of Minnesota.

The complaint stated, in effect, as follows: The Farmers' and Merchants' State bank, a banking corporation organized under the laws of and located in the State of Minnesota and there engaged in business from June 6, 1888, till June 20, 1893, on the last-named date, pursuant to the laws of such State, made an assignment for the benefit of its creditors, which assignment was fully perfected and such proceedings were thereafter had in administering it that the assets of the bank were converted into money and the net proceeds thereof distributed to the creditors, without paying them in full, by about $80,000. The capital stock of the bank was $75,000. Each individual stockholder was named in the complaint, with the amount of stock owned by him, defendant, Mary A. Guy, being one of such stockholders and said to be the owner of nineteen shares of the par value of $100 each. She resides in Pierce county, Wis. It was further alleged in the complaint, in effect, that by the laws of the State of Minnesota every person, on becoming a stockholder of a bank organized under its laws, in proportion to his interest, succeeds to the rights and becomes subject to the liabilities of his predecessor, and that the individual liabilities of stockholders to its creditors extends to double the amount of the stock and continues, as to any stockholder who may sell or transfer his stock, till the expiration of one year after such sale or transfer; that a creditor of a bank, desiring to enforce the individual
77 liability of its stockholders for the payment of his claim, may file his complaint, in an action instituted for that purpose, in any court in Minnesota having jurisdiction of the subject, and that thereupon such court is required to proceed "as in other cases and when necessary to cause an account to be taken of the property and debts due to and from the corporation, and appoint one or more receivers;" that there is a provision of statute, however, that in certain circumstances therein named the court may proceed to enforce the stockholders' liability without appointing a receiver and by its judgment as in other cases. The complaint further stated, in effect, that the statutes of Minnesota provide that in a creditor's action to enforce the statutory liabilities of bank stockholders the court may require all the creditors of the bank to become parties to the action and exhibit their claims within a reasonable time fixed by the court, not less than six months from the date of the first publication of the order to that effect, or be barred from all the benefits of such liabilities. The complaint further

stated, in effect, that according to the judicial system established in Minnesota by its highest judicial tribunal (citing the various cases that have been decided by such tribunal) the liability of stockholders of a bank organized under the laws of that State, to its creditors, must be enforced by first instituting an action, at the domicil of the corporation, against the corporation and all of its stockholders within the jurisdiction of the court, on behalf of all creditors of such corporation who shall participate in the action; that the proper method of proceeding in the action is to cause a judgment to be rendered in favor of each creditor for the amount owing him from the bank, and a judgment against each stockholder over whom the court shall have been able to obtain jurisdiction for the maximum amount of his liability, and to enforce
the judgment as to such liabilities *pro rata*, as far as prac-
78 ticable, in order to realize a sufficient amount of money to
pay all indebtedness of the bank established in the action to the extent of the full amount of such liabilities, and to cause a receiver to be appointed in the action to collect the judgments and distribute the proceeds and to enforce the liabilities of other stockholders residing in jurisdictions outside of that in which the judgment is rendered. Further, it was stated to be the law of Minnesota, as held by its highest judicial tribunal, and as indicated in the adjudications mentioned, that the statutory liability of stockholders is several and that a judgment against a part of them does not release others against whom no judgment is or can be rendered in the action; that if any of the stockholders are omitted from the first action because the court cannot acquire jurisdiction of them for any cause, an action ancillary to such first action, in any jurisdiction in which such stockholders may be found, may be brought; that an action to enforce such a liability is upon contract; that the judgment in the original action is binding on all stockholders, whether parties thereto or not, as to the amount due to creditors of the bank, and on all creditors entitled to the benefits of the stockholders' liability to creditors, and as to the respective rights of the particular creditors; that a stockholder of a bank organized under the laws of Minnesota, wherever he may reside, is bound by its laws, and his liability in accordance therewith may be enforced wherever he may be found and without any judgment there obtained against the corporation, if it be a place where no such judgment is possible. The complaint further alleged, in effect, that in January, 1894, an action was commenced, in a district court for the State of Minnesota having jurisdiction of the subject, against the banking corporation named and its stockholders, by a creditor of such bank, suing in his own behalf and that of all
others who might come in and participate in the action, to
79 enforce the liability of such stockholders to such creditors,
and that such proceedings were thereafter had in such action that the amount of the indebtedness of the bank wes adjudicated according to the laws and judicial system of Minnesota, and that the total amount collectible from all the stockholders of the bank, aside from the defendant, has been judicially determined to be, and

in fact is, less than sufficient to pay such indebtedness by over $80,000; that defendant, being a non-resident stockholder, residing in Pierce county, Wisconsin, could not be reached in such action, and that she is liable to the creditors entitled to participate in the benefits of the stockholders' liability to the extent of $3,800, with interest thereon from April 28, 1897. There were further allegations in the complaint showing that the receiver appointed in the creditors' action at the domicil of the corporation, and all the creditors whose claims were established in such action and entitled to participate in the benefits of the stockholders' liability, are joined as plaintiffs in this action, that they came to this State after having exhausted all remedies at the domicil of the corporation for the satisfaction of their claims, that they instituted this action against the defendant stockholder in this State because she could not be reached in the original action, and that this action is ancillary to the action brought at the home of the corporation. The prayer for judgment is: 1st. That defendant be required to pay $3,800 as her liability to plaintiffs, with interest from April 28th, 1897, at the rate of seven per cent per annum, with costs and disbursements, and that plaintiffs have execution therefor. 2. That plaintiff, A. C. Finney, be appointed receiver to collect the judgment and distribute the proceeds among the plaintiffs according to their respective rights in the fund. 3. That the court award such further judgment or order as may be necessary to enforce such liability of the defendant, and grant such further relief as the court can grant in the premises.

To that complaint the defendant interposed a demurrer, upon the ground, among others, that it fails to state facts sufficient to constitute a cause of action. The demurrer was overruled, and from the order accordingly entered this appeal is taken.

MARSHALL, *J.*:

As we view this case, the disposition of the question of whether the complaint states facts sufficient to constitute a cause of action against the defendant is decisive of the appeal. Some of the primary questions, upon which the ultimate question turns, are not free from difficulty.

The nature of the statutory liability of stockholders of a bank to its creditors under the laws of Minnesota is precisely the same as under the laws of this State, according to the adjudications of the highest judicial tribunal in each. Sec. 2501 of the Minnesota statutes says that each stockholder in a bank shall be individually liable, in an amount equal to double the amount of stock held by him, for all the debts of such bank. Sec. 47 of the banking act of this State provides that stockholders in a bank organized under the laws of this State shall be individually responsible, to the amount of their respective shares of stock, for all its debts and liabilities of every kind. In Coleman *v.* White, 14 Wis. 700, it was said, in substance, that such liability is primary and absolute, attaching at the instant the liability of the bank accrues, but enforceable on a basis akin to that of a partnership liability with the limitation fixed by statute, of the par value of the stock held by each stockholder.

To the same effect is Gianella *v.* Bigelow, 96 Wis. 185; Booth *v.* Dear, *id.* 516; Gager *v.* Marsden, 101 *id.* 598; Foster *v.* Posson, 81 N. W. 124, in which cases adjudications of the Minnesota court are cited as authority. The supreme court of Minnesota has decided that the liability is several of each stockholder to all the creditors, but joint in the sense that there
81 must be one action in which all the liabilities of all the stockholders to all the creditors, and the equities of the stockholders between themselves, can be worked out. That is, in effect, as stated by this court, that the liability of the stockholders is akin to that of partners, with a limitation as to extent thereof fixed by the statute. Allen *v.* Walsh, 25 Minn. 543; Arthur *v.* Willius, 44 *id.* 409; Harper *v.* Carroll, 66 *id.* 487; Hanson *v.* Davison, 76 N. W. 254. While the Minnesota court, in the last two cases cited, said that the liability is several, not joint, it is evident that the expression was not intended in a strict legal sense, for it was there distinctly held that in respect to the manner the liability must necessarily be worked out, it is joint, in that all the creditors participating must appear on one side of the controversy and all the stockholders charged, within the jurisdiction of the court, must appear on the other. The courts of the two States are in perfect harmony in that an action at law, as an original proceeding, at least, cannot be brought in any jurisdiction by a single or any number of creditors against a single or any number of stockholders and that the liability, in view of the manner in which it must be worked out, is nearer to that of partners to creditors of a partnership than to any other with which it can be compared, as was said by Dixon, C. J., in Coleman *v.* White.

The Minnesota statutes, secs. 5905, 5906, provide a remedy for the enforcement of the statutory liability of stockholders to creditors similar in all respects to that indicated by the statutes of this State on the same subject: secs. 3223—4 R. S. The courts in both States have held that the plain legislative purpose was to furnish, by the statutes referred to, a method for the enforcement of the statutory liability of stockholders, and that it requires one action in equity, in favor of all creditors to be charged, and against the corporation if there are corporate assets to be reached. Cole-
82 man *v.* White; Gianella *v.* Bigelow, and Booth *v.* Dear, *supra* (Wisconsin). Allen *v.* Walsh; Arthur *v.* Willius, *supra* (Minnesota). Both courts have said that the remedy, plainly indicated by the legislature, for the enforcement of the liability, is inseparably connected with it and is exclusive. Allen *v.* Walsh; Foster *v.* Posson, *supra.* In regard to this last branch of the subject, it is claimed by the respondent that the doctrine of Allen *v.* Walsh has been to some extent changed, and that will be considered later.

If we could rest the case at this point there would be no question but that the complaint is fatally defective. Unless the suggested modifiation of the doctrine of Allen *v.* Walsh, in Minnesota, requires a different result, such must be the decision, for two reasons: 1st. The statutory right, coupled with the statutory remedy for its en-

forcement, clearly intended to be presented at the home of the corporation, is not transitory. 2nd. The action in a Minnesota court is a bar to any other action to enforce the liability of stockholders.

It is elementary that while a statutory remedy, not in terms exclusive, for the enforcement of a common law right, is cumulative, and that a statutory right, in the absence of a remedy to enforce it, may be made available by some one of the ordinary remedies for the redress of wrongs, a statutory remedy, not by its terms cumulative, to enforce a statutory right, is exclusive. Amer. and Eng. Enc. Law, vol. 1, p. 184*c*. The ultimate question under consideration at this point, as appellant's counsel suggests, was definitely passed upon in May *v.* Black, 77 Wis. 101, where it was said that a statutory right, if coupled with a remedy to make it effective, that remedy is exclusive and the right is enforceable only within the jurisdiction of its creation. Numerous cases are cited to support that doctrine, among them: Pollard *v.* Bailey, 20 Wall. 520; Fourth National Bank *v.* Franklyn, 120 U. S. 747; Bank *v.* Bliss,
83 89 N. Y. 338; Christenson *v.* Eno, 106 N. Y. 97; Nimick *v.* Mingo Iron Works Co., 23 W. Va. 184; Patterson *v.* Lynde, 112 Ill., 196. For further cases on the subject see: Huntington *v.* Attrill, 147 U. S. 647; New Haven Horsenail Co. *v.* Linden Spring Co., 142 Mass., 349; Bank of North America *v.* Rindge, 154 Mass., 203. The subject was fully discussed in Pollard *v.* Bailey, *supra*, and the decision there reached has been followed without exception in the Federal Supreme Court. Waite, C. J., speaking for the court, said: "The individual liability of stockholders in a corporation for the payment of its debts is always a creature of the statute. At common law it does not exist. The statute which creates it may also declare the purpose of its creation and provide the manner of its enforcement. Here the liability and the remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by a statute, without a remedy, may be enforced by a proper common-law action, but where the provision for the liability is coupled with a provision for a special remedy, that remedy and that alone must be employed." So, in Erickson *v.* Nesmith, 4 Allen, 233, it was said: "A creditor of a corporation established in New Hampshire, the stockholders of which are individually liable for its debts, under the statutes of that State cannot maintain a bill in equity to enforce his claims against the stockholders in Massachusetts, although some of them live here." In Marshall *v.* Sherman, 148 N. Y. 9, after an exhaustive review of decisions on the subject, it was said in substance, that while it is not easy to state with exactness the principle upon which the courts of one State will not take jurisdiction of an action to enforce against one of its citizens a stockholder's liability under the laws of another State, the great weight of authority is against the maintenance of such an action. The case of May *v.* Black, *supra*, is there cited as
one of the significant instances where the law has been so de-
84 clared. It is useless to pursue this subject further. There was little use of saying more in regard to it than to state the law as indicated and refer to the decisions of our own State establishing

it as the prevailing rule here. Our attention is called to some recent adjudications which are said to conflict with the rule that a statutory liability of stockholders to creditors will not be enforced outside the jurisdiction of the State creating it, which, though in point as to the abstract question, are not as applied to the facts of this case.

One of the most significant cases referred to is Bank *v.* Ellis, 172 Mass. 39. It differs from Marshall *v.* Sherman, *supra*, in that it holds that the statutory liability of stockholders under the Kansas statute can be enforced in a foreign jurisdiction, solely upon the ground, however, that the law of Kansas does not furnish an exclusive remedy to enforce the right, according as such law is construed in the home jurisdiction; that every stockholder is thus liable in an action at law, to the first creditor who pursues him, in any court where service can be made upon him, till he has paid the full amount of his statutory liability, such liability being treated as in every sense several and on contract, so that the remedy of a creditor to enforce it can as well be pursued in one jurisdiction as another; and that under such circumstances a foreign jurisdiction should lend its aid to creditors against stockholders within its reach if thereby no serious inconvenience or injustice will be inflicted upon its own citizens. Turning to those statutes coupling a right with a remedy against stockholders, the court said: "This court has many times decided that the statutes of other States, creating the liability of stockholders to creditors of a corporation, which provides for a suit of a special kind to which the corporation and all stockholders are to be made parties, will not in general be enforced by the courts of this State; the special
85 remedy provided by the statute must be pursued, and as the statutes of a State have no force *ex propria vigore* beyond the territorial limits of the State, the remedy usually must be pursued in the State where the corporation has been established and the statute passed." Citing numerous cases in that and other courts, including May *v.* Black, *supra*. The court, having come to the conclusion that the cause of action under the Kansas statute was transitory, tested the question of whether courts of Massachusetts should take jurisdiction to enforce it by the general principles governing the conduct of courts in enforcing rights dependent upon foreign laws, which principles, other than such as relate to penal statutes, were stated, in substance, as follows: The foreign law must not contravene the policy of the State whose jurisdiction is invoked, or be contrary to public morals or abstract justice, or be calculated to injure the State or its citizens; the jurisdiction invoked must be able to reach all the parties affected by the litigation, so as to do complete justice between them, and it must be able to attain that end consistent with its own forms of procedure. Testing the situation before the court by such principles, it was concluded that the enforcement, in the courts of Massachusetts, of the statutory liability of a stockholder, resident in that State, of a Kansas banking corporation, does no injustice to such stockholder, because, if he be compelled to pay, he has the same right to pursue his associate stockholders for contribution as if he were a citizen of, and compelled to

respond to creditors in, Kansas; that the difficulties are no greater in the one case than in the other; that whatever difficulties exist, they were created by the Kansas statute, which permits individual actions at law against stockholders wherever they may be found, which law entered into the stockholder's contract with the corporation and its creditors when he became a member of such corporation.

86 So it will be seen that the Massachusetts case, confidently relied upon by the respondent, does not militate at all against the doctrine that a statutory right, dependent in the home jurisdiction upon a statutory remedy, must be enforced in such jurisdiction or not at all, or against the doctrine that a statutory right cannot be enforced in a foreign jurisdiction unless all the necessary parties to an action of that kind are before the court, nor if its enforcement will violate the policy or will subject the citizens of the foreign jurisdiction to serious inconvenience or injustice. It was principally on the latter ground that the New York court, in Marshall *v.* Sherman, declined to take jurisdiction.

Another case confidently referred to is Bank *v.* Lawrence (Mich.), 76 N. W. 105. The action was to enforce a statutory liability created by the Kansas statute, and jurisdiction was taken for the same reason as that stated by the Massachusetts court in the case before referred to, that is, upon the sole ground that the liability under the Kansas statute, as construed by its court, is enforceable by an action against any stockholder as an ordinary liability on contract, till such stockholder shall have paid to creditors the full amount for which he is responsible; that the action is transitory and should be enforced in all jurisdictions the same as other actions on contract, that can be as well enforced in one jurisdiction as in another, and where there is no good reason why the foreign court should not lend its aid to the enforcement of the right. True, the Michigan court made the extraordinary statement that the right to maintain a suit to enforce a statutory right under the Kansas statute in Michigan does not depend upon the law of comity. That was unnecessary to the decision. It is directly contrary to Bank *v.* Ellis, and, as it seems, to elementary principle. In all cases where a court is called upon to give effect to a right dependent upon a foreign

87 statute, it involves the enforcement of a foreign law and its action in that regard depends upon the rule of comity. That, as it seems, is too clear for reasonable controversy.

Neither Bank *v.* Ellis, Bank *v.* Lawrence, Bell *v.* Farwell, 176 Ill., 189, nor any other of the numerous cases that might be referred to regarding the enforcement of the statutory liability of stockholders to creditors, created by the Kansas statute, and statutes of other States creating a several liability of stockholders to creditors, in the sense that each stockholder is made liable directly to each creditor and may be made to respond accordingly in an action at law against him alone wherever he may be found, have any significance in determining the right of creditors in a foreign jurisdiction under statutes like that of Minnesota and this State, which plainly require the equities of all stockholders as between themselves to be worked

out in a single action in equity at the home of the corporation, and the contributions of all stockholders accumulated in the action to be treated as one fund, to be administered for the benefit of all creditors in proportion to the respective claims against the corporation as established in such action to which such corporation is a necessary party if there are corporate assets to be reached, and a proper party in respect to the issue regarding the indebtedness for which stockholders may be held liable. By a moment's consideration of the distinction between the two statutory systems, represented by the Kansas statute and the statute of Minnesota, it will be seen that the remedial processes that will affect the purposes of one are entirely unadapted to the other. A failure to keep such distinction in mind has led text-writers and courts into the error of supposing that the decisions in regard to one of such systems are in conflict with those in regard to the other.

It is contended that, admitting the rule above discussed—that where a statutory right is created, coupled with a specific
88 remedy to enforce it, such remedy is exclusive and cannot be pursued outside the home jurisdiction, as indicated in May *v.* Black, it does not apply here, because we are dealing with a Minnesota law, and the supreme court of that State, in Hanson *v.* Davidson, *supra*, has decided that the statutory remedy given there to enforce the liability under consideration, is only exclusive so far as it goes, that it requires an original action, by a creditor or creditors, in behalf of all persons so circumstanced who shall come into the action, against all the stockholders of the bank within the jurisdiction of the court, and that the liabilities of all such stockholders must be there enforced, and the indebtedness of the corporation, forming the basis therefor and for any action that may thereafter be brought in aid of the statutory action determined; that the statutory remedy does not preclude the institution and prosecution of ancillary action to reach stockholders, either in the home or other jurisdictions, that cannot be reached in the first instance, and that such stockholders by such actions may be pursued in any jurisdiction in Minnesota where they can be found, and in any foreign jurisdiction where the court will permit it.

Such is the state of the law as it now exists in Minnesota. It is a wide departure from the doctrine announced in Allen *v.* Walsh, 25 Minn. 543, where the statutes governing the subject were carefully and plainly construed, which construction, for a period of some twenty years, covering that within which the liability in question accrued, was the settled law of the State. In the early case it was said, that the statute prescribes a single action in equity, in which the liabilty of all stockholders to all creditors and the equities between the stockholders must be worked out or not at all. There is no room to mistake what the court intended in that case. The following language was used: "It is reasonable to suppose that
89 the legislature intended by those sections (referring to the sections set forth in the complaint here) to provide an efficient and sole remedy for enforcing payment of the debts of an insolvent corporation out of the individual liability of its stockholders, for the

rule is well settled that where a statute which creates a right also prescribes an adequate remedy, the latter is to be taken as the exclusive one; that the chapter which gives this remedy forms a part of the general statutes, which were adopted in 1866 and which contain the enactment that creates the statutory liability, and therefore the rule referred to is fairly applicable. It is shown, from an examination of these sections, that the remedy they provide contemplates a single action, in which all persons having or claiming any interest in the said action shall be joined or properly represented and their rights, equities and liabilities finally settled and determined."

We might easily, but it would draw this opinion out to an unnecessary length, refer to the decisions that followed Allen *v.* Walsh down to Hanson *v.* Davison, and show that the plain language of the early case was taken and applied in every instance in its literal sense.

In view of the foregoing, we read with some surprise the statement of the court in the Hanson case that the doctrine of Allen *v.* Walsh does not go so far as to preclude the institution and prosecution of an action ancillary to the principal action against those who cannot be brought in in the first instance. The reason of the later decision does not appeal very strongly to our judicial judgment. It starts out by overturning twenty years of established law at home and runs counter to the decisions of this and all other States where similar laws exist. While admitting that the Minnesota statute gives a specific remedy for the enforcement of the right under consideration, and that in pursuing such remedy the corporation may be a necessary party, and that such remedy must be pursued at the home of the corporation, the court not only ignores, as it seems, the law of the State long and firmly established, but that elsewhere, as indicated, but ignores the principle, of universal application, that a remedy coupled with a new right and evidently given for the purposes of its enforcement is exclusive.

To justify the position taken, without expressly overruling its long line of decisions to the contrary, the Minnesota court arbitrarily engrafted on to the existing system an element that the language of the statute and of the court construing it, as well as elementary principles, plainly exclude. To sustain the new doctrine that there must be a statutory action in the first instance, commenced and prosecuted to a termination, and that other actions may be brought in the home and other jurisdictions, it became necessary to hold that the result in the first action, as to all questions necessarily there litigated, is binding not only on all persons made parties to such action, but all so circumstanced that they might have been made parties could they have been found within the jurisdiction of the court, and on all parties that might have been admitted as participants in the action upon their own application; that in an ancillary action all questions litigated in the principal action must be deemed at rest, so that while defendants in the first action have their day in court as to the vital questions standing at the threshhold of their

liability, those in actions subsequently brought are bound without having that privilege; that while some stockholders can have their equities as between themselves and associate stockholders settled in the action where their liability is enforced, others may be made to respond and to cancel their liability, and then be compelled to resort to some other action, in some other jurisdiction, to settle their equities with their associates. It is recognized that it would be unjust to bind a stockholder by an adjudication in an action to which he is
91 not a party; but it is said that such is not the result of the new doctrine, because in the first action the corporation stands for all of its stockholders who are not present. How that can be it is easy to assert, but exceedingly difficult to demonstrate upon principle. The cases cited by the court do not appear to touch the question, as clearly indicated in the able dissenting opinion of Mr. Justice Canty. We shall not take time to review the authorities which the learned court refers to, to sustain its position on this branch of the case; suffice it to say, that they are all cases to enforce corporate rights. They do not appear to be in point in any respect to the theory they are used to support; not one is a case to enforce a superadded liability of stockholders to creditors or case involving any analogous question.

The corporation is not made a defendant in the principal action as a representative of the stockholders in any sense. It is joined of necessity only where there are corporate assets which ought to be applied to the payment of the debts. Otherwise, it is a proper party, but only for the purpose of establishing against it as a finality the amount of the indebtedness for which the stockholders are liable. The primary right to be adjudicated in such an action is the stockholders' liability. As an incident thereto, where there are corporate assets which should be applied to the payment of the indebtedness, the corporation must be brought in for the purpose of sequestrating and reaching such assets. If there are no such assets the corporation need not be made a party at all. That has been repeatedly held by this and other courts. Booth *v.* Dear, *supra;* Sleeper *v.* Goodwin, 66 *id.*, 577; *In re* Ins. Co., 56 Minn. 180; Minneapolis Baseball Co. *v.* City Bank, 66 *id.* 441.

We shall not further discuss the present state of the law governing the subject under consideration as it exists in the State of Minnesota. There are many features, not before referred to, that
92 are entirely out of harmony with the law here and elsewhere under similar statutes. While the statutes of Minnesota as thus construed by its court are supreme in that State, their effect here depends upon the law of comity.

The doctrine of Hanson *v.* Davison, as we view the decisions cited in support of it by respondent's counsel, and all others bearing on the subject that have come under our notice, from a pretty thorough study thereof, is without substantial support except by Hale *v.* Harden, 95 Fed., 747, where two Federal district judges rendered a decision following such doctrine and reversing the circuit judge who decided the case in the first instance, and the third member of the court, a circuit judge, dissented from his associates in a vigorous

and quite exhaustive opinion in which he stated, in substance, after reviewing the authorities, that the decision in Hanson *v.* Davison is so out of harmony with the previously established doctrine of the Minnesota court and with elementary principles, and so subversive of the rights of parties equally interested in a controversy to an equality of remedies, and to the right of every person to his day in court as to every material question involving his interest, that there is no rule of comity which requires or justifies its recognition in any other jurisdiction.

With due respect for the able court that pronounced the decision in Hanson *v.* Davison, we have reached the same conclusion as that expressed in the dissenting opinion referred to. To give effect to the Minnesota statutes as now construed by its highest tribunal would be unjust to the defendant, because it would, in effect, make a liability enforceable here that was not enforceable when it accrued and that could not have been enforced under the law of Minnesota as it existed prior thereto during the time the defendant was a member of the corporation; it would subject defendant to
93 substantially an independent action to enforce her liability, while, when it accrued, it was enforceable only in an action in equity at the domicil of the corporation, having sole jurisdiction of the entire subject of stockholders' liabilities to the creditors of the corporation, and of all questions necessarily incident thereto; it would conclude her, as to questions vital to her liability, by a judgment rendered in an action to which she was not a party; whereas when she became a member of the corporation she did so in contemplation of a liability with certain incidents, she would be burdened with materially different incidents; whereas the plain purpose of the law is that all stockholders shall stand equally as regards rights and remedies, it would subject the defendant to a much more burdensome remedy, before her ultimate rights could be determined and enforced, than it does the resident stockholders; it would result in giving to resident stockholders their day in court and denying that valuable right to the defendant; it would give effect to a law which is contrary to the policy of the law of this State.

For these and many other reasons that might be named, the law of Minnesota, as at present understood, should not be made effective here. Clearly the court cannot, consistent with the rules of comity, give effect to a doctrine which, if recognized, would lead to the oppressive results mentioned.

This court recognizes, fully, the importance of interstate comity and uniformly freely gives effect to it as regards the laws of sister States when it will not seriously violate the policy of our own laws or the rights of our own citizens. Tested by that standard and the most liberal rules usually applied to the subject, courts of this State cannot lend their aid in the circumstances presented in the complaint before us. A liberal course in the enforcement of the
94 laws of other States in proper cases should be the rule, but the parmount duty of our judicial system is to safeguard our own State policy and prevent injustice to our own people within reason-

able limits. Gilman *v.* Ketcham, 84 Wis. 60; Emery *v.* Burbank, 163 Mass. 326; Seamans *v.* Temple Co., 105 Mich. 400; Bank *v.* Ellis, 172 Mass. 39; Dearing *v.* McKinnon Dash Hardware Co., 33 App. Div. 31.

The doctrine of the Hanson case is not sustained, in its main features, in the home court, upon any other theory than that the corporation in the original action stands for all the absent creditors, and that a judgment as to it, after it has ceased to exist for any practicable purpose, concludes such absent members on questions in which the corporation has no interest and which it is bound to protect for the benefit of such members. That doctrine, as stated in the dissenting opinion referred to, in the Federal court, was never promulgated in Minnesota prior to Hanson *v.* Davison, and no case has been found elsewhere, except Hale *v.* Harden, where it has been even partially recognized, unless based on some special statute entering into the contract sought to be enforced.

The conclusion reached is, that the complaint fails to state a cause of action that can be entertained by the courts of this State, and that the decision of the lower court to the contrary must be reversed and the cause remanded for further proceedings according to law.

By the court: So ordered.

95 STATE OF WISCONSIN, }
Supreme Court. }

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original opinion of the court on file in my office in the above-entitled cause, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court, at Madison, the twenty-fifth day of April A. D. 1900.

CLARENCE KELLOGG,
Clerk of the Supreme Court of Wisconsin.

96 [Endorsed:] State of Wisconsin, supreme court. A. C. Finney, as receiver &c., respondents, against Mary A. Guy *et al.*, appellants. Certified copy of opinion of Marshall, J. Fee for this copy, $—. Pierce county, Wis. Filed April 27, 1900. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

97 A. C. FINNEY, as Receiver, ET AL., Respondents, }
vs.
MARY A. GUY, &c., Appellant. }

DODGE, *J.* (dissenting):

The decision in this case seems to me to destroy a clear and absolute right by denying any remedy for its enforcement and that too for no better reason than mere inconvenience to courts in their pro-

cedure, an inconvenience too which seems to me rather imaginary than real. This is a result which is not to the credit of the courts and should not be reached without a struggle to avert it. The constitution of Minnesota provides, and at the time the defendant acquired his shares of stock did provide: "Each stockholder in any corporation * * * shall be liable to the amount of stock held or owned by him." Under that provision the defendant with her costockholders were permitted to be a corporation. By availing herself of that privilege she entered into an absolute contract with the creditors of the corporation to pay, if needed, after exhausting the assets of the corporation, a sum equal to the par value of her stock. That such is her position and such the relation to creditors which she assumed, is the settled law of the State of Minnesota. Willis *v.* St. Paul Sanitation Co., 48 Minn. 140; Hanson *v.* Davison, 76 N. W. 254. Not only is it the law now, but so it was at all the times when defendant acquired or held her stock. I can hardly believe that the suggestion is deliberately made in the opinion of my brethren that the court has changed the law by its decision in Hanson *v.* Davison so that it is now other than it was before. Courts do not make or change law—they declare and administer it—and the supreme court of Minnesota has by the
98 case last mentioned simply declared what the law of that State has been ever since the adoption of the constitution. True, that court or the author of the opinion in an earlier case had indulged in certain remarks from which might be drawn inferences inconsistent with the decision in Hanson *v.* Davison, but those remarks were mere *obiter dicta* which, as is usual with *obiter dicta*, did not serve to make or establish any law but merely to subject to criticism the opinion containing them. This absolute liability existing on the one hand and its corresponding right upon the other, this court is confronted by the command of the constitution of Wisconsin, art. 1, sec. 9:

"Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

That command is disobeyed and the excuse does not seem to me sufficient. That excuse is that this court, like the court of Minnesota, long ago decided that serious inconvenience and confusion would result from enforcement of the individual liability of each stockholder at the behest of each creditor and therefore that, for mere convenience of procedure, the action which the courts were bound to extend to a creditor having such a right should be an equitable one, in which, as plaintiff, should be joined all the creditors, either actually or by representation, and to which should be joined such of the stockholders as could be brought within the jurisdiction of the court, together with the corporation itself, to the end that in the one action the court might ascertain the extent to which the assets of the corporation were inadequate to satisfy its debts and the resulting extent of the liability of stock-

holders and could adjust and apportion that liabilty amongs
99 such of them as were solvent. That is the whole scope an
extent of the decisions in this State, from Coleman *vs.* White
14 Wis. 700, to Foster *v.* Posson, 81 N. W. 124. That too is the ful
extent of the decisions of the supreme court of Minnesota. Nov
for the first time it is held that the judgment in such a suit dis
charges the liability of all stockholders, whether parties to it o
not, and that the stockholder who evades the jurisdiction, either a
a fugitive or as a non-resident, until the judgment has been ren
dered, has successfully defied and annulled the constitution of Min
nesota, and of this State as well. The cases referred to could no
with propriety go further than decision of the questions presented
in them. Courts are created to decide controversies, not to emit ab
stract treatises. It is therefore, as always, to be presumed that an
utterances general in their terms were not intended by the court t
apply to controversies or situations distinguishable from those pres
ent for decision. The assertion in Coleman *v.* White that a genera
equitable suit with all creditors as plaintiffs and all stockholder
within the jurisdiction together with the corporation as defendants
is the exclusive remedy, could mean no more than that such
remedy is exclusive of a direct action at law by one creditor agains
one stockholder when the equitable procedure was neither obstructed
nor exhausted. So the assertion in Foster *v.* Posson that the judg
ment in such general suit is final as to all rights whether as betwee
creditors and stockholders or as between different stockholders
must be understood as limited to stockholders over whom the cour
had jurisdiction, since that was the situation of those litigating a
alleged by the complaint, though the fact is not made apparent i
the opinion.

The suggested inconveniences attending the enforcement of th
creditors' rights against stockholders who successfully evade th
jurisdiction in the original suit are quite fully demonstrated
100 to be insignificant by the reasoning in Hanson *v.* Davison
and in Hale *v.* Hardon, 95 Fed. Rep. 747, which I shall for
bear repeating. In the case presented by the complaint at ba
there are absolutely none. The excess of debts over all assets i
an amount exceeding the total stock and the entire exhaustion o
all stockholders over whom jurisdiction can be obtained are se
forth, and the absolute liability of defendant for a definite amoun
with no possible right of contribution against any solvent costock
holders is made to fully appear. Is it not the part of justice t
vindicate the clear rights of the plaintiffs in this case where it i
obvious that no undue or unequal injury will be done the defend
ant, rather than to perpetrate certain wrong on the plaintiffs fro
mere apprehension that under some other circumstances it migh
not be easy to fully protect a defendant? If either is to suffe
should it not rather be the stockholder, who by the same diligenc
she finds easy when demanding her dividends could have informe
herself of the general litigation, and, by appearing therein, hav
protected herself from any inequality?

I the more deplore this decision because it diminishes the sol

vency of our own banks and denies to their creditors the liability of any stockholders who by reason of non-residence or otherwise may escape the process of the court in which the general equity suit must be prosecuted. It invites fraud and evasion by offering exemption to stockholders upon the easy expedient of placing their holdings in the names of non-residents. These are evils which, with the probable drastic legislation to avert them, seem to me much more terrible than the *the* inconvenience of courts or incongruity in mere forms of procedure.

Since the decision of this case the opinion of the Supreme Court of the United States in Whitman *v.* National Bank, 20 Sup. Ct. Rep. 479, has been published and seems to me to be squarely
101 in conflict with the opinion of this court. True, the liability under the Kansas constitution was there under consideration, but the recovery was justified not alone because the statute of Kansas would permit it, but because the provision of the constitution was self-executing and without the aid of any statute imposed a contract liability upon holders of stock enforceable in any court of general jurisdiction, considerations equally characterizing the Minnesota constitution. In that case also is shown how untenable are the objections to the binding effect upon stockholders of the adjudication against the corporation in the general closing-up action, which objections are deemed so weighty by my brethren.

(Endorsement:) Filed April 25, 1900. Clarence Kellogg, clerk supreme court, Wis.

102 (*Order.*)

Circuit Court, Pierce County.

A. C. FINNEY ET AL., Plaintiffs,
vs.
MARY A. GUY ET AL., Defendants.

At a special term of the circuit court of the 8th judicial circuit of the State of Wisconsin, held at the court-house in the city of Hudson, on the first Monday of January, 1901, which said term is a special term of the circuit court for Pierce county.

Present and presiding, Hon. E. W. Helms, circuit judge.

The issue of law raised herein by the demurrer of the defendant to the complaint of the plaintiffs herein coming on to be heard at said term and the same having been argued by counsel, F. M. White, Esq., and F. W. Reed, Esq., appearing for the plaintiffs and John W. Bashford, Esq., for the defendant and the court being advised in the premises.

Ordered that the demurrer of the defendant to the complaint herein be sustained and the complaint be dismissed with costs to the defendant.

By the court,

E. W. HELMS, *Judge.*

STATE OF WISCONSIN, }
County of St. Croix. }

In Circuit Court.

I, W. J. Egbert, clerk of the circuit court of said county, do hereby certify that the within order was granted in this court, this 7th day of January, 1901, and ordered that the same be entered in the office of the clerk of the circuit court for the county of Pierce State of Wisconsin.

Witness my hand and official seal, this 7th day of January, A. D. 1901.

[SEAL.] W. J. EGBERT, *Clerk.*

To the above and foregoing order and each and every part thereof plaintiffs except.

The plaintiffs also duly excepted to the said order of the court made herein sustaining the demurrer to said complaint and dismissing the complaint on the ground that it denies them a right given by sec. 1, art. 4, of the Constitution of the United States which reads:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

And the following statute passed in pursuance thereof, to wit:

Revised Statutes of the U. S. sec. 905: "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto.

103 The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form? And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

And that said order and decision is contrary to said provisions of the Constitution and laws of the United States.

E. W. HELMS,
Circuit Judge.

(Endorsements:) Original. Circuit court, Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy *et al.*, defendants. Pierce county, Wis. Filed Jan. 8, 1901. L. G. Spinney, clerk circuit court. Order recorded in Order Book F, page 339. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

104 (*Bill of Costs.*)

Circuit Court, Pierce County.

A. C. FINNEY ET AL., Plaintiffs,
vs.
MARY A. GUY and MARY A. GUY as Executrix, Defendants.

Costs of defendants.

Retainer	$3 00
Brief and copies	3 00
Draft demur., 3 folios, at 25 cents each	75
Eng. 1 file 1 keep 1 serve 9 at 12 cents each	96
Draft demur., 3 folios, at 25 cents each	75
Eng. 1 file 1 keep 1 serve 9, at 12 cents each	96
Attending trial, 3 days, at $3	9 00
Drawing judgment, 3 folios	75
Draft bill of costs, 4 folios, at 25 cents each	1 00
Eng. 1 file 1 keep 1 serve 1, at 12 cents each	48
3 terms' term fees, at $2 each	6 00
1 motion	62½
	$31 27½
Cost statutory	25 00

Disbursements.

State tax	1 00
Jury fee	3 00

The above costs and disbursements are hereby adjusted, taxed and allowed this 12th day of March, A. D. 1901, at $25.00.

L. G. SPINNEY, *Clerk.*

To F. M. White, attorney for plaintiff:

Please take notice that on the 12th day of March, A. D. 1901, at one o'clock p. m., the undersigned will apply to the clerk of
105 the circuit court, Pierce county, at his office in village of Ellsworth, county of Pierce, State of Wisconsin, to have the within bill of costs and disbursements in the within-entitled action taxed, adjusted and allowed, and the amount thereof inserted in the entry of judgment in the within-entitled action.

Yours, &c., JOHN W. BASHFORD,
Attorney for Defendants.

To F. M. White, attorney for plaintiffs.

It is hereby stipulated by and between the parties hereto that the defendants' costs in said action shall be taxed at the sum of twenty-five dollars.

(Endorsements:) Circuit court, Pierce county. A. C. Finney *et al.*, plaintiffs *v.* Mary A. Guy and Mary A. Guy as executrix. Bill of costs. Due service of within admitted this 6th day of March, 1901. F. M. White, pl'ffs' att'y. Pierce county, Wis. Filed March 7, 1901. L. G. Spinney, clerk circuit court. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

106 (*Judgment.*)

Circuit Court, Pierce County.

At a special term of the circuit court of the 8th judicial circuit of the State of Wisconsin, held at the court-house in the city of Hudson, on the first Monday of January, 1901, which said term is a special term of the circuit court of Pierce county, Wisconsin.

Present and presiding, Hon. E. W. Helms, circuit judge.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN Association; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfeld, C. G. Mulquish, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. F. Leckie, N. W. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

The issue of law raised in the above-entitled action by the demurrer of the defendant to the complaint of the plaintiffs herein, coming on to be heard at said term and the same having been argued by counsel F. M. White, Esq., and Fred W. Reed, Esq., appearing for the plaintiffs and John W. Bashford, Esq, for the defendants and the court being advised in the premises at said term, ordered,

That the demurrer of said defendants to the complaint herein be sustained and the complaint be dismissed with costs to the defendants.

Now, therefore, on motion of defendant,

It is ordered and adjudged, that said action be and hereby is dismissed, and that said defendant have and recover of said plaintiffs her costs and disbursements herein taxed at twenty-five dollars.

Dated March 27th, 1901.

L. G. SPINNEY,
Clerk of Court.

107 (Endorsements:) A. C. Finney *et al. v.* Mary A. Guy *et al.* Judgment. Pierce county, Wis. Filed March 27, 1901. L. G. Spinney, clerk circuit court. Recorded in Order Book F, page 353–354. Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

108 (*Clerk's Certificate.*)

STATE OF WISCONSIN:

In Circuit Court for Pierce County.

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolsfield, C. G. Melquist, Mrs. H. Adams, John H. Jordan; C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall; C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, Guaranty Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel M. Pratt, Copartners as H. Pratt & Co., Plaintiffs,

vs.

MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Defendants.

STATE OF WISCONSIN, } *ss:*
Pierce County, }

I, L. G. Spinney, clerk of the circuit court for Pierce county, Wisconsin, do hereby certify that the foregoing constitutes the entire record in the above-entitled action, and are all the original papers on file and of record in my office in said action, and that the same are transmitted to the supreme court of said State of Wisconsin pursuant to a notice of appeal and undertaking hereto attached, and which have been duly served upon me pursuant to the statute in such case made and provided.

In testimony whereof I have hereunto set my hand and [SEAL.] the seal of said court, this 4th day of June, A. D. 1901.

L. G. SPINNEY.

(Endorsements:) A. C. Finney as receiver *et al. v.* Mary A. Guy *et al.* Filed June 7, 1901. Clarence Kellogg, clerk of supreme court, Wis.

109 And afterwards, to wit: on the third day of September, A. D. 1901 the same being the second day of said term, the following proceedings were had in this court, in said cause, that is to say:

Pierce Circuit Court.

A. C. FINNEY, Receiver, &c., ET AL., Appellants,
vs.
MARY A. GUY ET AL., Respondents.

And now at this day came the said respondents, by R. M. Bashford, Esq., their attorney, and moved the court now here to strike certain papers from the record herein and to dismiss the appeal in this cause. Which motion having been argued by F. W. Reed, Esq. for the said appellants, and by R. M. Bashford, Esq. for the said respondents, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of the same.

110 And afterwards, to wit: on the twenty-fourth day of September, A. D. 1901, the same being the tenth day of said term, judgment was rendered in said cause, by this court, in the words and figures following, that is to say:

A. C. FINNEY, as Receiver; AMERICAN SAVINGS AND LOAN ASSOCIATION; W. D. Hale, as Receiver of said American Savings and Loan Association; Charles Wolfeld, C. G. Melquist, Mrs. H. Adams, John H. Jordan, C. G. Carr, Agent; Mrs. B. D. Adams, Cassius M. Conrad, Samuel H. Hall, C. S. Hulbert, as City Treasurer of the City of Minneapolis; Andrew Sundberg, W. R. Sinks, David Huston, C. A. Munson, Kate Rank, Samuel M. Pratt, State of Minnesota, M. H. Townsend, Harrison Pratt, Charles G. Van Wert, J. D. Laddy, Merchants' Bank of Winona, People's Savings and Loan Association, A. F. Leckie, H. Wehman, and Harrison Pratt and Samuel Pratt, Copartners as H. Pratt & Co., Appellants,
vs.
MARY A. GUY and MARY A. GUY as Executrix and Sole Residuary Legatee under the Will of Charles V. Guy, Deceased, Respondents.

Pierce Circuit Court.

Opinion by Justice Dodge.

This cause came on to be heard on appeal from the judgment of the circuit court of Pierce county; and the said respondents, by R. M. Bashford, Esq., their attorney, having moved the court now here to dismiss the appeal in this cause, and the court being now fully advised of and concerning the same, it is now here ordered and adjudged by this court, that respondents' motion to dismiss the appeal herein be and the same is hereby denied with ten dollars costs against the said respondents and in favor of the said appellants. And that the judgment of the circuit court of Pierce county, in this cause, be and the same is hereby affirmed, with costs against the said appellants taxed at the sum of thirty-three and $\frac{50}{100}$ dollars ($33.50).

111 And thereupon this court, by Justice Dodge, filed its opinion in said cause, in the words and figures following, that is to say:

A. C. FINNEY, Receiver, &c., ET AL., Appellants,
vs.
MARY A. GUY, Respondent.

Suit by the receiver of a Minnesota corporation, appointed by one of the courts of that State, to recover the additional stockholder's liability, under the laws and constitution of Minnesota.

The complaint was before this court and considered on demurrer in Finney *v.* Guy, 106 Wis. 256, wherein it was decided that the complaint did not state a cause of action. The former order of the circuit court overruling demurrer thereto was reversed and cause remanded "for further proceedings according to law." Upon filing remittitur, the circuit court entered an order "that the demurrer of the defendant to the complaint herein be sustained and the complaint be dismissed with costs to the defendant," whereupon judgment of dismissal was entered, from which the defendant appeals. The respondent moves to strike certain papers from the return on appeal, and moves separately to dismiss the appeal.

DODGE, *J.*:

The respondent presented and argued a motion to strike certain papers out of the record sent up from the court below, but we feel obliged to decline consideration for the reason that, such motion and a notice that the same would be made having been served on the appellant on the 15th day of August, 1901, the respondent, on the 17th day of August, served a notice that "the annexed notice of motion to dismiss the appeal in this action heretofore served on you on August 15, a copy of which is hereto annexed, is hereby
112 withdrawn." Annexed to that notice were copies of the notice and motion for striking out certain parts of the record. It may be, as is suggested, that respondent intended to withdraw a motion to dismiss, which also was served on the 15th day of August, but the annexing of copies of this particular motion to strike out could have left no reasonable doubt in the mind of the appellant that the motion now attempted to be presented was withdrawn. Appellant was justified in that conclusion and is therefore without notice, as our rules require, of the making of such motion. We may say in this connection, however, that one of the elements sought to be eliminated from the record, which consists in a declaration by the circuit judge appended to the order sustaining the demurrer, to the effect that the plaintiff excepted to such order and specified certain grounds of exception, is no proper part of the record before us on appeal, and its physical presence in the roll of papers transmitted by the clerk of the circuit court can have no effect. It cannot serve to inform us of any steps taken in the court below. Any such steps, which do not properly become a matter of record, can

only come to our notice by a bill of exceptions, settled and authenticated as such by the circuit judge. The document referred to is mere surplusage and of no efficacy whatever.

Respondent also moved, upon due notice, to dismiss this appeal for the reason that the judgment of the circuit court was, as asserted, entered in obedience to the mandate of this court, and therefore was and is the judgment of this court and not subject to appeal, citing in support of that position, Patten Co. *v.* G. B. & M. Canal Co., 93 Wis. 283. The position is not well taken. In the Patten case the action was remanded with directions to the court below to enter a judgment, which it did. In this case, upon the overruling of the demurrer, the cause was remanded "for further proceedings according to law." This placed it again in the control of the trial court to ascertain and decide what the law might be in
113 any future attitude the case might take; guided and controlled, of course, so far as this court had spoken, by the law laid down in its opinion. After the remission of the case, it was possible for the circuit court to decide either right or wrong as to the law, and therefore as to the steps that should be taken or decisions that might be rendered. Its decisions were not those of this court, but its own, and subject to review upon appeal as in other cases. Great Western T. Co. *v.* Burnham, 162 U. S. 339. It follows that the motion to dismiss must be denied and the action of the circuit court reviewed upon appeal to ascertain whether error has been committed.

Upon the merits, we are of course to consider first what was decided by this court upon the first appeal, for whatever we then decided has become *res adjudicata* and must control both the circuit court and this court at all subsequent stages of the same case. Priewe *v.* Wisconsin &c. Co., 103 Wis. 537; Wollman *v.* Ruehle, 104 *id.* 603; Richter *v.* Leiby Est., 107 *id.* 404. Turning to the former opinion and judgment in this court, 106 Wis. 256, we find it decided unambiguously that the complaint fails to state any cause of action maintainable in our courts. That being so, the action of the circuit court in sustaining the demurrer to that complaint, and, it not being amended, in entering judgment dismissing the same, is necessarily right and must be affirmed upon this appeal, no matter what new or different arguments might now be urged against the correctness of the conclusion then reached.

By the COURT: Respondent's motion to dismiss the appeal is denied, with ten dollars costs. The judgment appealed from is affirmed.

114 A. C. FINNEY, Receiver, &c., ET AL., Plaintiffs in Error,
vs.
MARY A. GUY, Defendant in Error.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file

and of record in my office with all things concerning the same in the above-entitled cause.

That the original writ of error, the petition therefor, the citation with its service endorsed thereon, the assignment of errors and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Madison, this twenty-second day of October, A. D. 1901.

Seal Supreme Court of Wisconsin.

CLARENCE KELLOGG,
Clerk of Supreme Court, Wisconsin.

Endorsed on cover: File No. 18,296. Wisconsin supreme court. Term No. 443. A. C. Finney as receiver, American Savings & Loan Association, W. D. Hale as receiver &c. *et al.*, plaintiffs in error, *vs.* Mary A. Guy, and Mary A. Guy as executrix of Charles V. Guy dec'd. Filed October 25th, 1901.